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# A Guide to Developing Open Access Through Your Digital Repository

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## Preface

This Guide has been undertaken as an initiative of the DEST funded Open Access to Knowledge (OAK) Law Project.

It aims to assist academic institutions in developing open access policies and legal and management frameworks for the effective development and operation of digital repository infrastructure. The Guide implements the recommendations of the *OAK Law Project Report No. 1: Creating a Legal Framework for Copyright Management of Open Access Within the Australian Academic and Research Sector*.

In particular, the Guide examines issues relating to the international open access movement and the implementation of open access policies for digital repositories, the operation of copyright law and copyright licensing of material deposited into digital repositories and the relationships - both legal and otherwise - between authors, publishers, repositories and end-users.

I am thankful to Ms Kylie Pappalardo and Dr Anne Fitzgerald for developing this Guide and to the team of people (Messrs Kiel-Chisholm, Austin and O'Brien) who have worked on this project at various times over the last 6 months. I would also like to acknowledge the valuable support of QUT DVC Professor Tom Cochrane, DEST Director of Education, Innovation and Infrastructure Policy Ms Margot Bell and DEST Assistant Director of Education, Innovation and Infrastructure Policy Ms Clare McLaughlin, Queensland Government Senior Lawyer Mr Neale Hooper and Ms Wilma Mossink of SURFfoundation.

In an era where research accessibility is critical to innovation I am confident that this Guide will assist and stimulate the further development of the vital infrastructure needed to make Australian research more accessible.

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## 1.0 Introduction

### 1.1 What is open access?

#### *Open access defined*

The advent of the internet and digital technologies has enabled information to be accessed and disseminated far more easily than ever before. Technological developments have swept away a whole range of restrictions that in earlier times impeded or prevented open access to knowledge, such as geographical barriers, time restrictions, delays in distribution of physical materials and barriers that limited the range of sources accessible by any one individual. Improved access to information benefits researchers by enabling them to study their field more broadly, reducing the amount of duplicative research, and assisting in the production of better informed - and therefore better quality - research.<sup>1</sup> For these reasons, the open access movement aims to promote the dissemination of knowledge broadly and freely across the internet in a timely fashion.<sup>2</sup>

#### *Open access principles*

The open access movement as we know it today began in the first half of the 1990s. Its origins are associated not with the publication of overarching statements of principles describing the open access movement and its goals but with the launch of several databases and free online peer reviewed journals. Early examples of open access journals include the Electronic Journal of Communication (launched 21 September 1990), the Electronic Journal of Analytic Philosophy (launched August 1993), and the Electronic Journal of Sociology (launched September 1994).<sup>3</sup> The databases include GenBank, a database of all publicly available DNA sequences, launched by the National Center of Biotechnology Information in 1992.<sup>4</sup> Other milestones in the early years of the open access movement include:

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<sup>1</sup> John Houghton, Colin Steele and Peter Sheehan, *Research Communication Costs in Australia: Emerging Opportunities and Benefits* (September 2006) Centre for Strategic Economic Studies, Victoria University, Melbourne, p32 <[http://www.dest.gov.au/NR/rdonlyres/0ACB271F-EA7D-4FAF-B3F7-0381F441B175/13935/DEST\\_Research\\_Communications\\_Cost\\_Report\\_Sept2006.pdf](http://www.dest.gov.au/NR/rdonlyres/0ACB271F-EA7D-4FAF-B3F7-0381F441B175/13935/DEST_Research_Communications_Cost_Report_Sept2006.pdf)> at 19 March 2007.

<sup>2</sup> Professor Brian Fitzgerald, Dr Anne Fitzgerald, Professor Mark Perry, Scott Kiel-Chisholm, Erin Driscoll, Dilan Thampapillai and Jessica Coates, *OAK Law Project Report No 1: Creating a Legal Framework for Copyright Management of Open Access Within the Australian Academic and Research Sector* – a report for the Department of Education, Science and Training (DEST) (August 2006), 87 (hereinafter *OAK Law Report*).

<sup>3</sup> See Peter Suber, Open Access Timeline <<http://www.earlham.edu/~peters/fos/timeline.htm>> at 19 March 2007.

<sup>4</sup> Ibid.

- the creation in 1993 by CERN (the world's largest particle physics laboratory) of an electronic preprint repository for deposit of CERN Scientific Documents;<sup>5</sup>
- the commencement in 1994 of publication by the National Academies Press of free online copies of books which were previously published in printed form, which was found to increase the sales of the printed editions; and
- the activation in 1994 of the Human Genome Project's open access web site with information about the project and gene sequencing.<sup>6</sup>

From the late 1990s, various international organisations and groups began to formulate overarching policy and principle statements about open access. These statements expressed a commitment to open access and sought to articulate how open access could be achieved by the international research community. The statements have been remarkably influential in the open access movement worldwide, and can be used by universities and research centres to inform the development of open access policies and principles at an institutional level.

The primary international open access statements are set out below.

#### *Bermuda Principles - 1996*

One of the first international statements on open access is the Bermuda Principles, published in 1996. The Bermuda Principles, developed by scientists involved in the International Human Genome Sequencing Consortium and their funding agencies, establish a basis for the rapid and free sharing among scientists of pre-published data on gene sequences.<sup>7</sup> Their intent was to make entire genome sequences freely available in the public domain for research and development, in order to maximise benefits to society.<sup>8</sup> In January 2003, the Bermuda Principles were reaffirmed by an international group of genome data producers and users, journal editors and funding body representations convened by the Wellcome Trust at Fort Lauderdale.<sup>9</sup> The group confirmed that open release of genome sequence data had greatly benefited scientific research.

#### *Budapest Open Access Initiative - 2002*

In 2002, the Budapest Open Access Initiative (BOAI) extended open access principles to peer-reviewed journal literature. The BOAI was developed at a meeting of the Open Society Institute in Hungary in December 2001, has the objective of removing

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<sup>5</sup> See Joanne Yeomans, "CERN's Open Access E-print Coverage in 2006 : Three Quarters Full and Counting", *High Energy Physics Libraries Webzine*, issue 12, March 2006 <<http://library.cern.ch/HEPLW/12/papers/2/>> at 18 April 2007; CERN Action on Open Access <<http://open-access.web.cern.ch/Open-Access/pp.html>> at 18 April 2007, <<http://cdsweb.cern.ch/>>

<sup>6</sup> See Peter Suber, Open Access Timeline <<http://www.earlham.edu/~peters/fos/timeline.htm>> at 19 March 2007

<sup>7</sup> <[http://en.wikipedia.org/wiki/Bermuda\\_Principles](http://en.wikipedia.org/wiki/Bermuda_Principles)> at 14 March 2007.

<sup>8</sup> Ibid.

<sup>9</sup> The Wellcome Trust, *Sharing Data from Large-scale Biological Research Projects: A System of Tripartite Responsibility*, Report of a meeting organised by the Wellcome Trust and held on 14-15 January 2003 at Fort Lauderdale, USA, available at <<http://www.wellcome.ac.uk/assets/wtd003207.pdf>>.



access barriers to primary scientific literature by encouraging self-archiving of published articles and open access journals. The BOAI has played a significant role in advancing the open access movement generally, and has clearly articulated the importance of open access:

Removing access barriers...will accelerate research, enrich education, share learning of the rich with the poor and the poor with the rich, make this literature as useful as it can be, and lay the foundation for uniting humanity in a common intellectual conversation and quest for knowledge.<sup>10</sup>

As of 13 March 2007, 4275 individuals and 380 organizations have joined the BOAI.

### *Bethesda Statement on Open Access Publishing - 2003*

Following the BOAI, there was a strong surge in support for the open access movement worldwide. This resulted in the development of more well-defined, thorough and progressive open access statements which have been adopted by academic institutions, funding bodies and international organisations. Among these is the Bethesda Statement on Open Access Publishing, released on 20 June 2003,<sup>11</sup> which focuses on providing open access to primary scientific literature as quickly as possible. To facilitate this, the Bethesda Statement includes a working definition of “Open Access Publication”, being one which satisfies the following conditions:

1. The author(s) and copyright holder(s) grant(s) to all users a free, irrevocable, worldwide, perpetual right of access to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship, as well as the right to make small numbers of printed copies for their personal use.
2. A complete version of the work and all supplemental materials, including a copy of the permission as stated above, in a suitable standard electronic format is deposited immediately upon initial publication in at least one **online repository that is supported by an academic institution, scholarly society, government agency, or other well-established organization** that seeks to enable open access, unrestricted distribution, interoperability, and long-term archiving (for the biomedical sciences, PubMed Central is such a repository).<sup>12</sup>

### *Berlin Declaration - 2003*

The Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, published in 2003,<sup>13</sup> was drafted to “promote the Internet as a functional instrument for a global scientific knowledge base and human reflection.”<sup>14</sup> It supports the intrinsic merit of making resources and contributions available on the internet for all to access (for example, through online repositories). The Berlin Declaration also provides a definition of “Open Access Publication”, which mirrors that in the Bethesda Statement. On the basis of this definition, the Open Society Institute, in its Open Access Publishing and Scholarly Societies Guide, has extracted what it terms the “essentials” of open access:

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<sup>10</sup> <http://www.soros.org/openaccess/read.shtml>.

<sup>11</sup> <http://www.earlham.edu/~7Epeters/fos/bethesda.htm>.

<sup>12</sup> <http://www.earlham.edu/~peters/fos/bethesda.htm>.

<sup>13</sup> <http://oa.mpg.de/openaccess-berlin/berlindeclaration.html>.

<sup>14</sup> <http://oa.mpg.de/openaccess-berlin/berlindeclaration.html>.

There are three main essentials: free accessibility, further distribution, and proper archiving.

Open access is real open access if:

1. The article is universally and freely accessible, at no cost to the reader, via the Internet or otherwise, without embargo.
2. The author or copyright owner irrevocably grants to any third party, in advance and in perpetuity, the right to use, copy, or disseminate the article, provided that correct citation details are given.
3. The article is deposited, immediately, in full and in a suitable electronic form, in at least one widely and internationally recognized open access repository committed to open access and long-term preservation for posterity.<sup>15</sup>

The Berlin Declaration has been significant in advancing open access to research and scholarly material and as of 13 March 2007 has been signed by 227 organisations from all over the world.<sup>16</sup>

### *Research Funding Organisations*

Research funding organisations in both the public and private sectors have adopted international open access principles to mandate or encourage researchers to deposit funded research results in open access repositories.

In the United States, the National Institutes of Health (NIH), the world's largest funder of medical research, urges all the researchers it funds to make their research articles publicly available in the NIH digital repository, PubMed Central.<sup>17</sup>

In the United Kingdom, the Wellcome Trust, an independent charity dedicated to promoting research to improve human and animal health and the UK's largest non-governmental source of funds for biomedical research,<sup>18</sup> makes it a condition of research funding grants that -

a copy of the final manuscripts of all research papers supported in whole or in part by the Grant must be deposited into PubMed Central (or UK PubMed Central once established) upon acceptance for publication, to be made freely available as soon as possible and in any event within six months of the journal publisher's official date of final publication.<sup>19</sup>

In January 2006, the European Commission (EC) published a Study on the Economic and Technical Evolution of the Scientific Publication Markets of Europe.<sup>20</sup> A central recommendation of the study was:

RECOMMENDATION A1. GUARANTEE PUBLIC ACCESS TO PUBLICLY-FUNDED RESEARCH RESULTS SHORTLY AFTER PUBLICATION

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<sup>15</sup> Open Society Institute, *Open Access Publishing and Scholarly Societies: A Guide* (2005) <[http://www.soros.org/openaccess/pdf/open\\_access\\_publishing\\_and\\_scholarly\\_societies.pdf](http://www.soros.org/openaccess/pdf/open_access_publishing_and_scholarly_societies.pdf)> at 13 March 2007, 6.

<sup>16</sup> <<http://oa.mpg.de/openaccess-berlin/signatories.html>>.

<sup>17</sup> See the NIH Public Access Policy <<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-05-022.html>> at 28 November 2006.

<sup>18</sup> For more information, see <<http://www.wellcome.ac.uk/aboutus/>>.

<sup>19</sup> <<http://www.wellcome.ac.uk/assets/wtx026668.pdf>>.

<sup>20</sup> See <[http://ec.europa.eu/research/science-society/pdf/scientific-publication-study\\_en.pdf](http://ec.europa.eu/research/science-society/pdf/scientific-publication-study_en.pdf)> at 14 March 2007.

Research funding agencies have a central role in determining researchers' publishing practices. Following the lead of the NIH and other institutions, they should promote and support the archiving of publications in open repositories, after a (possibly domain-specific) time period to be discussed with publishers. This archiving could become a condition for funding.

The following actions could be taken at the European level: (i) Establish a European policy mandating published articles arising from EC-funded research to be available after a given time period in open access archives, and (ii) Explore with Member States and with European research and academic associations whether and how such policies and open repositories could be implemented.

A year later, in January 2007, the EC issued a petition encouraging the adoption of this recommendation as a matter of urgency among European research funding agencies and academic institutions. As of 14 March 2007, the petition had attracted 23,575 signatories from all over the world.<sup>21</sup>

In Australia, the Australian Research Council (ARC) included the following paragraph in its Funding Rules for funding commencing in 2008:

The ARC ... encourages researchers to consider the benefits of depositing their data and any publications arising from a research project in an appropriate subject and/or institutional repository wherever such a repository is available to the researcher(s). If a researcher is not intending to deposit the data from a project in a repository within a six-month period, he/she should include the reasons in the project's Final Report. Any research outputs that have been or will be deposited in appropriate repositories should be identified in the Final Report.<sup>22</sup>

Similarly, in December 2006 the National Health and Medical Research Council (NHMRC), an organisation dedicated to maintaining and developing public and individual health standards in Australia, released its Project Grants funding policy for funding commencing in 2008. The NHMRC policy does not go as far as the ARC policy in requiring researchers give explanations if they do not deposit their research in a digital repository. The NHMRC policy provides:

To maximise the benefits from research, findings need to be disseminated as broadly as possible to allow access by other researchers and the wider community. The NHMRC encourages researchers to consider the benefits of depositing their data and any publications arising from a research project in an appropriate subject and/or institutional repository wherever such a repository is available to the researcher(s). Any research outputs that have been or will be deposited in appropriate repositories should be identified in the Final Report.<sup>23</sup>

Most recently, on 9 March 2007, the Australian Government Productivity Commission released a Research Report on Public Support for Science and Innovation. In the Report, the Commission stated:

The Commission continues to hold the view that funding agencies should take an active role in promoting open access to the results of the research they fund, including data and research papers. Although the ARC and NHMRC's recent announcement of promoting voluntary

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<sup>21</sup> See <<http://www.ec-petition.eu/index.php?p=index>> at 14 March 2007.

<sup>22</sup> Australian Research Council, Discovery Projects: Funding Rules for funding commencing in 2008, <[http://www.arc.gov.au/pdf/DP08\\_FundingRules.pdf](http://www.arc.gov.au/pdf/DP08_FundingRules.pdf)> at 1 February 2007, 13.

<sup>23</sup> National Health and Medical Research Council, Project Grants funding policy for funding commencing in 2008, p21 <[http://www.nhmrc.gov.au/publications/\\_files/profundingpol.pdf](http://www.nhmrc.gov.au/publications/_files/profundingpol.pdf)> at 16 February 2007.

access is to be commended, the Commission considers that the progressive introductions of a mandatory requirement would better meet the aim of free and public access to publicly-funded research results...The Commission considers that its proposal that there be a clear requirement for open access publication be implemented progressively by funding agencies to enable all participants sufficient time to adjust.<sup>24</sup>

### *Other Advocates*

There is an increasing number of individuals who actively advocate the adoption of open access principles and practices, among the best known of whom are Dr Peter Suber, Professor Steven Harnad and, in Australia, Professor Arthur Sale. All have long played central roles in the advocacy of open access, particularly through their writings on open access developments worldwide, newsletters, blogs and journal articles.<sup>25</sup> Harnad, a professor of cognitive science at the University of Southampton, is credited with being the first to advocate the self-archiving of published articles, in June 1994.<sup>26</sup>

### *Summary*

It is advisable to develop some general open access principles or “touchstone principles” based on the international open access declarations, which your institution can adhere to when establishing and running its open access repository (and other relevant schemes within your institution). A sample set of touchstone principles is set out below. If you want to take a strong open access position, you may want to adopt all of these principles. You may also choose to omit some of the principles, or add some principles of your own, as suits your institution.

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<sup>24</sup> Productivity Commission 2007, *Public Support for Science and Innovation*, Research Report, Productivity Commission, Canberra, 240-241.

<sup>25</sup> See Peter Suber’s blog at <<http://www.earlham.edu/~peters/hometoc.htm>> and Stevan Harnad’s blog at <<http://openaccess.eprints.org>>.

<sup>26</sup> See Peter Suber, Open Access Timeline <<http://www.earlham.edu/~peters/fos/timeline.htm>> at 19 March 2007.

**The following is a sample set of Open Access Principles that may be adopted by your institution as the foundation for an Open Access Policy. They may guide your institution in the implementation of an open access digital repository and other open access infrastructure:**

### **General Open Access Principles Endorsed by the Institution**

- 1.0 We support the principle of open access to knowledge.
- 1.1 Open access facilitates the wide dissemination of knowledge including, but not limited to, original research results, scholarly articles, raw data and metadata, source materials, digital representations of pictorial and graphic materials, and scholarly multimedia materials.<sup>27</sup>
- 1.2 Open access to knowledge is important for the following reasons:
  - 1.2.1 Research is an interdependent process whereby later work is informed by the earlier works of others.<sup>28</sup> Easy and open access to scholarly and research output allows for the production of more accurate and progressive research results, providing for scholarly and intellectual advancement;<sup>29</sup>
  - 1.2.2 Broader access to information aids more rapid scientific development, which benefits the community at large, particularly in the area of medicine;<sup>30</sup>
  - 1.2.3 The global sharing of knowledge and learning encourages social unity and

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<sup>27</sup> Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities (2003) <[http://www.zim.mpg.de/openaccess-berlin/berlin\\_declaration.pdf](http://www.zim.mpg.de/openaccess-berlin/berlin_declaration.pdf)> at 18 January 2007 (hereinafter Berlin Declaration).

<sup>28</sup> Bethesda Statement on Open Access Publishing (2003) <<http://www.earlham.edu/~peters/fos.bethesda.htm>> at 16 November 2006 (hereinafter Bethesda Statement).

<sup>29</sup> See, for example, Messina Declaration (2004) <<http://www.aepic.it/conf/viewappendix.php?id=49&ap=1&cf=1>> at 16 November 2006 (hereinafter Messina Declaration); Budapest Open Access Initiative (2002) <<http://www.soros.org/openaccess/read.shtml>> at 16 November 2006 (hereinafter Budapest OAI); Group of Eight Statement on open access to scholarly information (2004) <<https://mx2.arl.org/Lists/SPARC-OAForum/Message/754.html>> at 16 November 2006 (hereinafter Group of Eight Statement); Association of College and Research Libraries Principles and Strategies for the Reform of Scholarly Communication (2003) <<http://www.ala.org/ala/acrl/acrlpubs/whitepapers/principlesstrategies.htm>> at 16 November 2006; OATS: Open Access Team for Scotland – Declaration (2005) <<http://scur.ac.uk/WG/OATS/declaration.htm>> at 16 November 2006 (hereinafter OATS Declaration).

<sup>30</sup> See, for example, OATS Declaration.

cultural advancement;<sup>31</sup> and

1.2.4 The principle that all people, whether rich or poor, should have free and equal access to information.<sup>32</sup>

1.3 We believe that the traditional methods of sharing information, primarily through conventional print publishing, while still relevant, are no longer suitably adapted to the wider dissemination of knowledge that new technology allows.<sup>33</sup> Electronic publishing and the internet offer the opportunity to exchange information globally, immediately and effectively.<sup>34</sup> We commit to embracing these new technologies and their role in removing traditional barriers to access.

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<sup>31</sup> See, for example, Messina Declaration; Association of College and Research Libraries Principles and Strategies for the Reform of Scholarly Communication (2003) <<http://www.ala.org/ala/acrl/acrlpubs/whitepapers/principlesstrategies.htm>> at 16 November 2006; OATS Declaration.

<sup>32</sup> Budapest OAI.

<sup>33</sup> Access to research publications: Universities UK position statement (2003) <[http://www.universitiesuk.ac.uk/mediareleases/downloads/Open%20Access\\_UUK%20policy%20principles\\_FINAL.pdf](http://www.universitiesuk.ac.uk/mediareleases/downloads/Open%20Access_UUK%20policy%20principles_FINAL.pdf)> at 16 November 2006.

<sup>34</sup> Bethesda Statement.

<sup>35</sup> Budapest OAI; Association of College and Research Libraries Principles and Strategies for the Reform of Scholarly Communication (2003) <<http://www.ala.org/ala/acrl/acrlpubs/whitepapers/principlesstrategies.htm>> at 16 November 2006.

<sup>36</sup> Association of College and Research Libraries Principles and Strategies for the Reform of Scholarly Communication (2003) <<http://www.ala.org/ala/acrl/acrlpubs/whitepapers/principlesstrategies.htm>> at 16 November 2006; Research Councils UK updated position statement on access to research outputs (June 2006) <<http://www.curl.ac.uk/Presentations/MembersNovember06/ResearchCouncilsUK.pdf>> at 18 January 2007 (hereinafter Research Councils UK position statement); OATS Declaration; see also Productivity Commission 2007, *Public Support for Science and Innovation*, Research Report, Productivity Commission, Canberra, 227-228.

<sup>37</sup> Research Councils UK position statement; OATS Declaration; see also Productivity Commission 2007, *Public Support for Science and Innovation*, Research Report, Productivity Commission, Canberra, 232-236, 240-241.

<sup>38</sup> See, for example, Berlin Declaration; Bethesda Statement; Budapest OAI; Association of College and Research Libraries Principles and Strategies for the Reform of Scholarly Communication (2003) <<http://www.ala.org/ala/acrl/acrlpubs/whitepapers/principlesstrategies.htm>> at 16 November 2006; Research Councils UK position statement; OATS Declaration; Access to research publications: Universities UK position statement (2003) <[http://www.universitiesuk.ac.uk/mediareleases/downloads/Open%20Access\\_UUK%20policy%20principles\\_FINAL.pdf](http://www.universitiesuk.ac.uk/mediareleases/downloads/Open%20Access_UUK%20policy%20principles_FINAL.pdf)> at 16 November 2006; Wellcome Trust Position Statement in Support of Open and Unrestricted Access to Published Research, <[http://www.wellcome.ac.uk/doc\\_WTD002766.html](http://www.wellcome.ac.uk/doc_WTD002766.html)> at 16 November 2006 (hereinafter Wellcome Trust Position Statement); NIH Public Access Policy (2005) <<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-05-022.html>> at 28 November 2006.

<sup>39</sup> Wellcome Trust Position Statement; see also, Research Councils UK position statement; OATS Declaration.

<sup>40</sup> Wellcome Trust Position Statement; Research Councils UK position statement.

- 1.4 We adopt this policy on the basis that where researchers and scholars are willing to share their work, without payment, for the sake of inquiry, knowledge and public benefit, they should not be prevented by restrictive laws, practices or publishing contracts.<sup>35</sup>
- 1.5 We assert the importance of open access to the results of publicly funded research in particular. This research, as well as being funded by the community, is undertaken to benefit the physical, social and cultural health of the community. Therefore, ideas and knowledge derived from publicly funded research should be made accessible to the community as rapidly and effectively as possible.<sup>36</sup>
- 1.5.1 We support any moves by research funders to promote open access to the published output of research that they fund, including requiring researchers to publish in open access journals or to deposit their output in digital repositories.<sup>37</sup>
- 1.6 We acknowledge the important role played by digital repositories in providing open access to knowledge.<sup>38</sup> We have established an institutional/faculty/disciplinary repository for the deposit of faculty and research output. This repository conforms to OAI (Open Archives Initiative) standards so that it is interoperable with search engines and other archives.
- 1.6.1 We strongly encourage, and where possible mandate, researchers, authors and scholars to deposit a complete version of papers accepted for publication and other appropriate material into our digital repository.<sup>39</sup> Material should be deposited as soon as possible after publication, or where otherwise complete, and at most within six months of publication.<sup>40</sup>
- 1.7 We encourage authors to retain copyright in their work where possible (by not assigning copyright to the publisher), and where the publisher insists on a transfer of copyright, to assert their right to deposit their work in an institutional repository. We support publishing and copyright agreements that allow authors to retain copyright (by only taking a licence to publish) or that allow authors to self-archive.

1.8 We commit to educating colleagues, researchers and the public about the importance of open access.<sup>41</sup> We will undertake campus advocacy to increase awareness about our digital repository and its corresponding open access policy.<sup>42</sup>

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<sup>41</sup> Berlin Declaration; Bethesda Statement.

<sup>42</sup> See, for example, Association of College and Research Libraries Principles and Strategies for the Reform of Scholarly Communication (2003)  
<<http://www.ala.org/ala/acrl/acrlpubs/whitepapers/principlesstrategies.htm>> at 16 November 2006.



## 1.2 What are digital repositories?

### *Digital repositories defined*

A digital repository is an online archive in which authors and academics can deposit their work, with the intention that it will be openly available in digital form. The term ‘digital repository’ may also be used to refer to the organisation which is responsible for the long-term maintenance of digital resources and for making these resources available to the public or specified communities of users.<sup>43</sup>

Wikipedia identifies five different types of repositories:

**Institutional repositories** – “A repository established by a particular university or other research institution is known as an institutional repository. It can be intended to collect and preserve – in digital form – the intellectual output on an institution.”<sup>44</sup>

**Departmental repositories** - “A repository established for the use of a particular academic department or laboratory is properly called a departmental repository, though the term institutional repository is also used.”<sup>45</sup>

**Subject repositories** – “A repository established to collect and preserve material in a particular subject is called a subject repository; they can be organized by a government, a government department, or by a research institution, or be autonomous.”<sup>46</sup>

**National repositories** – “A repository for general use by scholars working in a particular country is a national repository, but such repositories can also be organized on a more local basis.”<sup>47</sup>

**Material repositories** – “A repository can also be intended for a particular type of material, such as a these repository or a newspaper repository.”<sup>48</sup>

A subject repository may also be referred to as a disciplinary repository. For example, the Australasian Legal Information Institute (AustLII) offers a database of purely law-related material. One repository included under the AustLII framework is the University of New South Wales Faculty of Law Research Series.<sup>49</sup>

The Scholarly Publishing and Academic Resources Coalition (SPARC), an international alliance of universities, research libraries and organisations,<sup>50</sup> defines “institutional repositories” as “digital collections capturing and preserving the

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<sup>43</sup> Research Libraries Group Inc (RLG) and Online Computer Library Center (OCLC), Attributes of a Trusted Digital Repository: Meeting the Needs of Research Resources (Draft for Public Comment), August 2001, <<http://www.rlg.org/longterm/attributes01.pdf>> at 13 March 2007, 5.

<sup>44</sup> Repository (publishing) <[http://en.wikipedia.org/wiki/Repository\\_%28publishing%29](http://en.wikipedia.org/wiki/Repository_%28publishing%29)> at 14 February 2007.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> <<http://www.austlii.edu.au/au/journals/UNSWLRS/>> at 13 March 2007.

<sup>50</sup> For more information, see <<http://www.arl.org/sparc/about/index.html>> at 14 February 2007.

intellectual output of a single university or a multiple institution community of colleges and universities.”<sup>51</sup>

According to SPARC, an institutional repository has four characteristics. It is:

- institutionally defined;
- scholarly;
- cumulative and perpetual; and
- open and interoperable.<sup>52</sup>

Most repositories operate at an institutional level (i.e. across a whole university), at a disciplinary level (e.g. a biochemistry repository, which may include content from several institutions) or at a faculty level (e.g. within the School of Computing or within the Science faculty). Where necessary, there can also be a single repository that operates across several institutions. For example, the RUBRIC (Regional Universities Building Research Infrastructure Collaboratively) Project focuses on developing sustainable repository infrastructure for smaller and regional universities. The project involves several partner institutions – the University of Southern Queensland (USQ), the University of New England, the University of the Sunshine Coast, the University of Newcastle and Massey University in New Zealand – working together to “evaluate, trial and implement an Institutional Repository solution”.<sup>53</sup>

### ***Why should you have a digital repository?***

There are many benefits to establishing a digital repository, including the opportunity to provide a wider range of educational resources to your faculty, and the positive impact this may have upon your institution’s scholarly reputation.

A digital repository:

- enables staff and other subscribers to have easy access to scholarly and research material generated by members of your institution;
- provides access to a range of materials at other institutions worldwide, where your repository forms part of a global system of interoperable repositories;
- provides stable, long-term archiving of information and research output thereby preserving it for the future;

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<sup>51</sup> SPARC Institutional Repository Checklist and Resource Guide, prepared by Raym Crow, SPARC Senior Consultant, 2002, <[http://www.arl.org/sparc/IR/IR\\_Guide.html#repository](http://www.arl.org/sparc/IR/IR_Guide.html#repository)> at 14 February 2007 (hereinafter Crow, Institutional Repository Checklist).

<sup>52</sup> A Case for Institutional Repositories: A SPARC Position Paper, prepared by Raym Crow, SPARC Senior Consultant, 2002, <[http://www.arl.org/sparc/IR/IR\\_Final\\_Release\\_102.pdf](http://www.arl.org/sparc/IR/IR_Final_Release_102.pdf)> at 14 February 2007 (hereinafter Crow, A SPARC Position Paper).

<sup>53</sup> See <[www.rubric.edu.au/docs/home.htm](http://www.rubric.edu.au/docs/home.htm)> at 20 March 2007.

- allows for information to be widely and quickly disseminated so that it achieves the highest impact (this can be contrasted with traditional publishing models which are based on restricting, through subscription prices, access to information);<sup>54</sup>
- increases the academic reputation of your institution by demonstrating the quality and relevance of the research output produced by members of your institution and by increasing your institution's general visibility, which can translate into tangible benefits such as increased funding from both public and private sources; and
- facilitates greater citation of deposited articles, thereby increasing the profile of contributing authors.<sup>55</sup>

### ***Management frameworks surrounding digital repositories***

#### **The Accessibility Framework**

In 2004, the Australian Government announced that it would establish an Accessibility Framework for Publicly Funded Research.<sup>56</sup> The primary goal of the

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<sup>54</sup> See Bill Hubbard, 'SHERPA and Institutional Repositories' (2003) 16(3) *Serials* 243-247 <<http://eprints.nottingham.ac.uk/archive/00000095/01/sherpa&instrep.pdf>> at 12 January 2007 (hereinafter Hubbard, 'SHERPA and Institutional Repositories').

<sup>55</sup> Various studies have found that articles deposited in digital repositories are cited more often than articles that are published in subscription journals and not archived: Christopher Gutteridge and Stevan Harnad, *Applications, Potential Problems and a Suggested Policy for Institutional E-Print Archives* (19 August 2002) <<http://eprints.ecs.soton.ac.uk/6768/01/eprintsolicy.pdf>> at 12 January 2007 (hereinafter Gutteridge and Harnad, *Applications, Potential Problems and a Suggested Policy*); Arthur Sale, *Generic Risk Analysis – Open Access for your institution* (6 March 2006) <[http://eprints.utas.edu.au/266/01/Risk\\_Analysis-v1.0.pdf](http://eprints.utas.edu.au/266/01/Risk_Analysis-v1.0.pdf)> at 12 January 2007 (hereinafter Sale, *Generic Risk Analysis*); Stephen Pinfield, Mike Gardner and John MacColl, 'Setting up an institutional e-print archive' (2002) 31 *Ariadne* <<http://www.ariadne.ac.uk/issue31/eprint-archives/intro.html>> at 4 January 2007 (hereinafter Pinfield, Gardner and MacColl, 'Setting up an institutional e-print archive'); Stevan Harnad, *Generic Rationale and Model for University Open Access Self-Archiving Mandate: Immediate-Deposit/Optional Access (ID/OA)* (2006) Self Archiving Policy <<http://openaccess.eprints.org/index.php?/archives/71-GENERIC-RATIONALE-AND-MODEL-FOR-UNIVERSITY-OPEN-ACCESS-SELF-ARCHIVING-MANDATE.html>> at 25 September 2006 (hereinafter Harnad, *Generic Rationale and Model for University Open Access Self-Archiving Mandate*); Hubbard, 'SHERPA and Institutional Repositories'.

<sup>56</sup> Australian Government Department of Education, Science and Training (DEST), 'Accessibility Framework' <[http://www.dest.gov.au/sectors/research\\_sector/policies\\_issues\\_reviews/key\\_issues/accessibility\\_framework/default.htm](http://www.dest.gov.au/sectors/research_sector/policies_issues_reviews/key_issues/accessibility_framework/default.htm)> at 16 January 2007; see also Productivity Commission 2007, *Public Support for Science and Innovation*, Research Report, Productivity Commission, Canberra, 228-229; Professor Brian Fitzgerald, 'Building Blocks for the Australian Accessibility Framework', *Campus Review*, 30 January 2007.

Accessibility Framework is to assist universities and publicly funded research bodies to develop and manage information infrastructure so that information and research outputs are discoverable, accessible and shareable.<sup>57</sup> For researchers, this means “improved access to digital repositories and research facilities and correspondingly improved mechanisms for dissemination of their research outputs.”<sup>58</sup>

In advancing the Accessibility Framework, the Government has funded, through the Department of Education, Science and Training (DEST), a number of Systemic Infrastructure Initiative (SII) projects.<sup>59</sup>

The SII projects include:<sup>60</sup>

- Australian Research Repositories Online to the World (ARROW) – led by Monash University, this project aims to identify and test software solutions to best support institutional digital repositories;<sup>61</sup>
- IMS Australia – based at Macquarie University, IMS aims to keep Australia abreast of key international developments in technology standards applicable to repositories;<sup>62</sup>
- Meta Access Management System (MAMS) – led by Macquarie University, this project helps to develop technical services (metadata searching and authentication) to enhance research dissemination, especially through sophisticated access control mechanisms so that there can be different levels of access to a repository and not just an everyone or no one dichotomy of access;<sup>63</sup>
- Australian Partnership for Sustainable Repositories (APSR) – led by the Australia National University (ANU), this establishes a centre of excellence for the management of digital collections;<sup>64</sup>
- Molecular Medicine Informatics Model (MMIM) – developed at the University of Melbourne, MMIM enables medical researchers to link and map

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<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> See Australian Government Department of Education, Science and Training (DEST), ‘Accessibility Framework’

<[http://www.dest.gov.au/sectors/research\\_sector/policies\\_issues\\_reviews/key\\_issues/accessibility\\_framework/default.htm](http://www.dest.gov.au/sectors/research_sector/policies_issues_reviews/key_issues/accessibility_framework/default.htm)> at 16 January 2007.

<sup>60</sup> There are currently 60 SII-funded projects. For the full list, see

<[http://www.dest.gov.au/sectors/higher\\_education/programmes\\_funding/programme\\_categories/research\\_related\\_opportunities/systemic\\_infrastructure\\_initiative/sii\\_funded\\_projects.htm](http://www.dest.gov.au/sectors/higher_education/programmes_funding/programme_categories/research_related_opportunities/systemic_infrastructure_initiative/sii_funded_projects.htm)> at 14 February 2007.

<sup>61</sup> The ARROW Project is discussed throughout this document, see in particular Section 6.0 Technical Considerations. Also see

<<http://www.arrow.edu.au/>>.

<sup>62</sup> IMA Australia is part of a global consortium, see <<http://www.imsglobal.org/resources.html>> at 14 February 2007.

<sup>63</sup> See <<http://www.melcoe.mq.edu.au/projects/MAMS/>>.

<sup>64</sup> For more information see: <<http://www.apsr.edu.au/>>.

records, tissue banks, images, clinical data and genetic data across common diseases;<sup>65</sup>

- Middleware Action Plan and Strategy (MAPS) – established at the University of Queensland, this project identifies software and services (middleware) that are currently being used in Australia to link applications across a range of resources on networks and computer systems in Australian universities;<sup>66</sup>
- Dataset Acquisition, Accessibility and Annotation e-Research Technology Project (DART) – led by Monash University, the DART project seeks to provide tools and database solutions to deal with the life cycle of research, from data through to publication;<sup>67</sup>
- BlueNet – established at the University of Tasmania, BlueNet is the Australian Marine Science Data Network, which links data repositories and marine resources that currently reside in individual academic and government institutions;<sup>68</sup>
- Australian Digital Thesis Program Expansion and Redevelopment (ADT) – led by the University of New South Wales, this project creates a national collaborative database of digital theses;<sup>69</sup>
- Joint Academic Scholarships On-line Network (JASON) – hosted by the University of Melbourne in association with a number of other universities, JASON is a database on postgraduate scholarships to study at an Australian institution, to study overseas as part of an Australian degree;<sup>70</sup>
- Open Access to Knowledge (OAK) Law Project – hosted by Queensland University of Technology (QUT), the OAK Law Project is developing legal protocols for managing copyright issues in an open access environment;<sup>71</sup> and
- Legal Framework for e-Research Project – also hosted by QUT, this project extends the OAK Law project to develop a framework for understanding how e-Research legal issues can be managed, structured and reformed to facilitate collaboration.<sup>72</sup>

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<sup>65</sup> See <<http://mmim.ssg.org.au/>> at 14 February 2007.

<sup>66</sup> See <<http://www.middleware.edu.au/>> at 14 February 2007.

<sup>67</sup> See <<http://dart.edu.au/>> at 14 February 2007.

<sup>68</sup> See <<http://www.bluenet.org.au/>> at 14 February 2007.

<sup>69</sup> For more information see: <<http://www.anu.edu.au/aul/adt/adt2006-2009businessplan.doc>> The deposit of digital theses is not extensively covered in this guide.

<sup>70</sup> See <<http://www.jason.edu.au/>> at 14 February 2007.

<sup>71</sup> See <<http://www.oaklaw.qut.edu.au>> at 26 March 2007.

<sup>72</sup> See <<http://www.e-research.law.qut.edu.au>> at 26 March 2007.

### The Research Quality Framework

The Research Quality Framework (RQF) is a federal government initiative designed to ensure that government funding is being distributed to research of the highest quality and research that will benefit the wider community.<sup>73</sup>

In assessing research under the RQF, two factors are taken into account:

- Research Quality – the quality of original research including its intrinsic merit and academic impact; and
- Research Impact – the social, economic, environmental, and/or cultural benefit of research to end-users in the wider community regionally, nationally and/or internationally.<sup>74</sup>

Both Research Quality and Research Impact are assessed on a five point scale. A dual rating system recognises that while both research impact and excellence in research are important, they do not necessarily occur simultaneously in all research projects and institutions.<sup>75</sup> Research may be of high quality but have little impact in the wider community, or conversely may have an enormous impact even though the quality of the research paper is not rated particularly high. Quality of a research paper is judged according to a number of factors, including the impact of the journal in which the paper is published. Small or new journals may not have acquired a high impact rating yet, which may result in their papers being rated at a lower quality.<sup>76</sup> The RQF recognises this possibility, but also rewards research that rates highly on both scales.

Interestingly, studies show that articles that have been deposited in digital repositories are downloaded and cited twice as much as articles that are not deposited in digital repositories,<sup>77</sup> thereby increasing the impact of that article in the general and academic communities.

### ***Who else has a digital repository?***

Many universities throughout Australia have already established digital repositories (see Section 1.3). This follows an international institutional repository movement, particularly in the UK and the USA. One of the more notable university repositories is the DSpace Repository at the Massachusetts Institute of Technology (MIT), which

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<sup>73</sup> Australian Government Department of Education, Science and Training (DEST), 'The Research Quality Framework' <<http://www.dest.gov.au/NR/rdonlyres/2C544F63-8BFC-48DF-9BE6-C0C47867F64E/14984/RQF.pdf>> at 19 January 2007.

<sup>74</sup> Australian Government Department of Education, Science and Training (DEST), *Research Quality Framework: Assessing the quality and impact of research in Australia*, 'The Recommended RQF' (October 2006) <[http://www.dest.gov.au/NR/rdonlyres/7E5FDEBD-3663-4144-8FBE-AE5E6EE47D29/14867/Recommended\\_RQF\\_Dec2006.pdf](http://www.dest.gov.au/NR/rdonlyres/7E5FDEBD-3663-4144-8FBE-AE5E6EE47D29/14867/Recommended_RQF_Dec2006.pdf)> at 19 January 2006.

<sup>75</sup> Australian Government Australian Research Council (ARC), 'Research Quality Framework: Response to the Preferred Model' (October 2005) <[http://www.arc.gov.au/pdf/ARC\\_response\\_to\\_Preferred\\_Model\\_051005.pdf](http://www.arc.gov.au/pdf/ARC_response_to_Preferred_Model_051005.pdf)> at 19 January 2007, 11.

<sup>76</sup> The exception in PLoS, which despite being a relatively new open access publisher nonetheless has a high impact rating.

<sup>77</sup> See for example, Harnad, *Maximising Research Impact Through Institutional and National Open-Access Self-Archiving Mandates*.

stores, indexes, preserves and distributes digital research material.<sup>78</sup> DSpace repository software was released by MIT in 2002, and is now also used by Cornell University in America and by the University of Technology Sydney in Australia. Another popular repository software program is EPrints, which was created in 2000. EPrints is free, open source software that aims to help institutions generate open access repositories. EPrints is used by Oxford University in England, and in Australia by QUT, the University of Melbourne, the University of Queensland, the University of Tasmania, Victoria University, University of Southern Queensland, and James Cook University.

Most recently, the Australian Research Repositories Online to the World (ARROW) project is developing and testing new software to assist institutions to more easily set up and manage institutional repositories.<sup>79</sup> The project is funded by the Department of Education Science and Training, and once complete will offer software that enables “more creative uses of repositories and more flexible ways in which repositories integrate with other knowledge management tools.”<sup>80</sup> The ARROW consortium comprises of Monash University, National Library of Australia, the University of New South Wales, Swinburne University of Technology and University of Southern Queensland.<sup>81</sup> ARROW Community members are Queensland University of Technology, Central Queensland University, University of South Australia, University of Western Sydney and La Trobe University.<sup>82</sup>

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<sup>78</sup> See <<https://dspace.mit.edu/>> at 12 January 2007.

<sup>79</sup> See <<http://www.arrow.edu.au/docs/files/ARROW%20project.pdf>> at 2.

<sup>80</sup> <<http://www.arrow.edu.au/about/>>.

<sup>81</sup> <<http://www.arrow.edu.au/>>.

<sup>82</sup> <<http://www.arrow.edu.au/>>.

### 1.3 Open access policies for digital repositories

#### *Why have an open access policy?*

When setting up your digital repository, it is important to have an open access policy.

An open access policy:

- establishes the scope of materials that may be deposited into the repository, and the conditions on which they can be accessed and used;
- sets out the repository's obligations in managing and maintaining the materials that are deposited into it;
- ensures authors understand the purpose of the repository, and their rights in relation to it (e.g. deposit of material does not transfer copyright to the repository); and
- informs end-users about how to use the repository, and how they may deal with the materials available in the repository.

An open access policy will be most effective if it is adopted and applied at the institutional level. If there is any resistance or delay in establishing an institutional-wide open access policy, particularly a mandatory open access policy,<sup>83</sup> it may be possible to implement open access policies at the departmental level. The various departmental policies could subsequently be used to formulate a broader policy applying at the institutional level. This approach is referred to by Professor Arthur Sale as the "Patchwork Mandate".<sup>84</sup>

#### *Are other institutions already using open access policies?*

In late 2006 and early 2007, an analysis was undertaken by the OAK Law Project into Australian universities with digital repositories and open access policies. The universities found to have digital repositories, as at 13 March 2007, were:

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<sup>83</sup> See 3.1 Deposit Requirements.

<sup>84</sup> For more on this, see Arthur Sale, *The Patchwork Mandate* (Jan/Feb 2007) *D-Lib Magazine* 13(1/2) at <[http://eprints.utas.edu.au/410/02/The\\_Patchwork\\_Mandate.pdf](http://eprints.utas.edu.au/410/02/The_Patchwork_Mandate.pdf)> at 14 March 2007 (hereinafter Sale, *The Patchwork Mandate*).



- Australian National University (ANU);<sup>85</sup>
- Bond University;<sup>86</sup>
- Central Queensland University;<sup>87</sup>
- Curtin University;<sup>88</sup>
- Flinders University;<sup>89</sup>
- James Cook University;<sup>90</sup>
- Monash University;<sup>91</sup>
- Queensland University of Technology (QUT);<sup>92</sup>
- Southern Cross University;<sup>93</sup>
- Swinburne University;<sup>94</sup>
- University of Adelaide;<sup>95</sup>
- University of Melbourne;<sup>96</sup>
- University of New South Wales;<sup>97</sup>
- University of Queensland (UQ);<sup>98</sup>
- University of Southern Queensland (USQ);<sup>99</sup>
- University of Sydney;<sup>100</sup>

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<sup>85</sup> Australian National University (ANU) Eprint Repository principles  
<<http://eprints.anu.edu.au/information.html>> at 2 October 2006.

<sup>86</sup> Bond University e-publications repository <<http://epublications.bond.edu.au/>> at 31 January 2007.

<sup>87</sup> Central Queensland University Institutional Repository Policy  
<<http://policy.cqu.edu.au/Policy/policy.jsp?policyid=679>> at 1 February 2007.

<sup>88</sup> Curtin University espace@Curtin server principles  
<<http://library.curtin.edu.au/espaces/faqabridged.html>> at 9 October 2006.

<sup>89</sup> Flinders Academic Commons <<http://www.lib.flinders.edu.au/~dspace/faq.html>> at 31 January 2007.

<sup>90</sup> JCU ePrints <<http://eprints.jcu.edu.au/researchpapers.html>> at 31 January 2007.

<sup>91</sup> Monash University ARROW Repository guide  
<<http://arrowprod.lib.monash.edu.au:8000/access/about.php>> at 2 October 2006.

<sup>92</sup> Queensland University of Technology (QUT) E-print repository for research output policy  
<[http://www.mopp.qut.edu.au/F/F\\_01\\_03.html](http://www.mopp.qut.edu.au/F/F_01_03.html)> at 11 September 2006.

<sup>93</sup> Southern Cross University e-publications <<http://epubs.scu.edu.au/>> at 31 January 2007.

<sup>94</sup> Swinburne Research Bank <<http://researchbank.swinburne.edu.au/access/about.php?>> at 31 January 2007.

<sup>95</sup> University of Adelaide Digital Library <<http://digital.library.adelaide.edu.au/dspace/faq/faq.jsp>> at 31 January 2007.

<sup>96</sup> University of Melbourne E-print Repository Collection Policy  
<<http://www.lib.unimelb.edu.au/eprints/collectionpolicy.htm>> at 2 October 2006.

<sup>97</sup> University of New South Wales ARROW Repository Policy <<http://arrow.unsw.edu.au/policy.html>> at 31 January 2007.

<sup>98</sup> University of Queensland (UQ) ePrint Archive policy  
<<http://www.library.uq.edu.au/database/efaq.html>> at 2 October 2006.

<sup>99</sup> University of Southern Queensland (USQ) ePrints Collection Development Policy  
<<http://www.usq.edu.au/eprints/policies/collpol/eprints.htm>> at 2 October 2006.

- University of Tasmania;<sup>101</sup>
- University of Technology Sydney;<sup>102</sup>
- University of Wollongong;<sup>103</sup> and
- Victoria University.<sup>104</sup>

While some of the policies used by these repositories are still being developed and improved, they provide a good indication of how open access principles are being applied in the Australian education and research sector. Information derived from the OAK Law Project's analysis is included in this guide to illustrate the kinds of open access policies that have been implemented to date and how effective they are in practice. Additionally, a brief summary of the open access policies of each of these institutions is included at the conclusion of this report, in Appendix One.

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<sup>100</sup> Sydney eScholarship Repository policy <<http://setis.library.usyd.edu.au/ses/roles.html>> and <<http://setis.library.usyd.edu.au/ses/faq.html>> at 31 January 2007.

<sup>101</sup> University of Tasmania ePrints  
<<http://www.eprints.org/openaccess/policy/signup/fullinfo.php?inst=University%20of%20Tasmania>>  
at 2 October 2006 and <<http://www.utas.edu.au/copyright/eprints/faq.html>> at 12 January 2007.

<sup>102</sup> University of Technology Sydney e-Press Institutional Repository  
<<http://epress.lib.uts.edu.au/dspace/>> at 31 January 2007.

<sup>103</sup> University of Wollongong Research Online <<http://ro.uow.edu.au/about.html>> at 31 January 2007.

<sup>104</sup> Victoria University Policy: E-print Repository for the Research Output of Victoria University Staff and Students <<http://wcf.vu.edu.au/GovernancePolicy/PDF/POI041116000.PDF>> at 31 January 2007.

## **1.4 Using this guide**

An open access policy should be comprehensive, but clear and easy for both authors and end-users to understand.

This guide will help you to construct your open access policy, and will outline the information that it should contain.

This guide is designed to be easy to use. It will:

- explain open access concepts and terms;
- assist you to determine the extent of open access that your repository will provide; and
- help to define the extent of your obligations in relation to the repository.

Proceed through the guide step-by-step. At each step, consider what is best for your particular institution. The boxes next to each option can be ticked to record and track your choices. The guide can be used as a checklist to help you formulate an open access policy that covers all necessary issues. Where appropriate, examples of the policy choices made by other Australian universities have been included for comparison.

## 2.0 Depositors

### Consider: Who can deposit in your repository?

<input type="checkbox"/>	Staff
<input type="checkbox"/>	Students
<input type="checkbox"/>	Postgraduate
<input type="checkbox"/>	Research
<input type="checkbox"/>	All
<input type="checkbox"/>	Research scholars
<input type="checkbox"/>	Other creators/authors affiliated with the university (e.g. visiting academics)

Open access policies will almost always apply to staff. All university policies analysed by the OAK Law Project were expressed to apply to staff members. The authority to require (or strongly encourage) staff to deposit their work into the repository will usually arise from the terms of the staff member's employment.

You should also decide whether or not you wish your policy to apply to students. Many institutions apply their policies to postgraduate students only. However, Curtin University's policy applies to undergraduate students if the student is working with academic staff on specific research or publications, and Swinburne's policy applies to students within a Swinburne research centre. The University of New South Wales, James Cook University and ANU apply their policies to students generally.

It is not uncommon to allow visiting or adjunct academic staff to deposit material in the repository. Monash University, Bond University, Central Queensland University, University of Melbourne, Swinburne University of Technology, University of New South Wales, ANU and Curtin University all allow submission by authors and creators affiliated with the university, such as visiting academics.

Things to consider when deciding who should be allowed to deposit in your repository include:

- how strongly you would like the depositor to be connected with your institution; and

- the kind of material you would like in your repository. For example, would you like theses to be deposited? If so, the open access policy will need to apply to postgraduate students.<sup>105</sup>

You may also like to have different deposit requirements for different groups of depositors. For example, you might make it mandatory for staff to deposit research articles, but only voluntary for postgraduate students or adjunct academics to deposit research articles. This may be an administration issue depending on your institution's capacity to enforce mandatory deposit requirements against larger groups of depositors. The interplay between compulsory and voluntary deposits is considered in more detail at 3.1 below.

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<sup>105</sup> PhD and Masters by Research theses may be contained in a separate repository specifically for electronic theses and dissertations: See *OAK Law Report*, Chapter 6.

### 3.0 Material

**Consider: What material can be deposited in your repository?**

- ☐ Books
- ☐ Book chapters
- ☐ Research papers
- ☐ Journal articles
- ☐ Magazine articles
- ☐ Newspaper articles
- ☐ Conference papers
- ☐ Working papers
- ☐ Data sets
- ☐ Theses<sup>106</sup>
- ☐ Technical reports
- ☐ Teaching materials
- ☐ Published patents
- ☐ Unpublished literary work, or artistic work if accompanied by text
- ☐ Drafts of work, if there is substantial content in the draft not contained in the final version
- ☐ Dissertations forming part of a coursework Masters or Doctorate degree
- ☐ Research reports forming a substantial part of an undergraduate degree, if agreed to by the Dean of Faculty
- ☐ Multimedia objects
- ☐ Computer programs

***What material is usually deposited in institutional repositories?***

All of the Australian universities with existing open access policies request (with QUT mandating and the University of Tasmania in the process of mandating) the

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<sup>106</sup> Ibid.

deposit of journal articles, research papers and theses (although theses are usually deposited into a separate ADT repository). Most allow deposit of books and book chapters, conference papers, working papers, data sets and technical reports. Less common are open access policies that provide for teaching materials, creative works and computer programs. In fact, computer programs can only be archived at Curtin University if written permission is obtained from the university.

### 3.1 Deposit requirements

#### *Mandatory and voluntary deposits*

#### **Consider: Will deposit in the digital repository be mandatory or voluntary?**

This is relevant, because if deposit is to be mandatory for some or all material or for some depositors, it is important that you inform academics of the extent to which they *must* deposit their work.

You can:

- ☐ Impose compulsory deposit requirements on staff, and allow students and others (e.g. visiting academics) to deposit voluntarily; or
- ☐ Impose compulsory deposit requirements on some material (e.g. theses) but not other material (e.g. data set deposits may be optional); or
- ☐ Make deposit of material into the repository completely voluntary for all staff and students to whom the policy applies.

Studies undertaken by Professor Arthur Sale, a leading open access advocate at the University of Tasmania, indicate that a mandatory deposit policy works better than a voluntary deposit policy.<sup>107</sup> This is because authors are generally willing to comply with a requirement to deposit, resulting in a high level of content in the repository.<sup>108</sup> In fact, a survey undertaken by the Joint Information Systems Committee (JISC)<sup>109</sup> in the UK found that 95% of authors would comply willingly (as opposed to comply reluctantly or not comply) with a self-archiving mandate. Usually, a mandatory policy in itself will be enough to compel co-operation, and there is no need to impose penalties for non-compliance.<sup>110</sup>

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<sup>107</sup> Arthur Sale, 'Comparison of content policies for institutional repositories in Australia' (2006) 11(4) *First Monday* <[http://firstmonday.org/issues/issue11\\_4/sale/index.html](http://firstmonday.org/issues/issue11_4/sale/index.html)> at 25 September 2006 (hereinafter Sale, 'Comparison of content policies for institutional repositories in Australia'); Sale, *Generic Risk Analysis*; Sale, *The Patchwork Mandate*. See also Harnad, *Generic Rationale and Model for University Open Access Self-Archiving Mandate*.

<sup>108</sup> Sale, 'Comparison of content policies for institutional repositories in Australia'; Sale, 'The acquisition of open access research articles'; Sale, *The Patchwork Mandate*.

<sup>109</sup> JISC was established in April 1993 and aims to provide world-class leadership in the innovative use of Information and Communication Technology to support education and research. For more information, see <[www.jisc.ac.uk](http://www.jisc.ac.uk)>.

<sup>110</sup> Sale, *The Patchwork Mandate*.



At QUT, a mandatory deposit policy applying to staff and post-graduate students has been in place since 1 January 2004.<sup>111</sup> The policy commenced when QUT's ePrint repository was established, so no comparison can be made at QUT alone between the effect of a mandatory policy and the effect of a voluntary policy. However, by examining the impact of deposit policies at various universities around Australia, Professor Arthur Sale determined that "[b]efore a mandatory deposit policy is established, documents dribble in to the repository even many years after the date of publication. [Yet] [o]nce a mandatory policy is established, the pattern changes dramatically, and deposit occurs around the date of publication."<sup>112</sup> Voluntary deposit policies do not result in significant levels of content in the repository - usually only 10-20% of the available research output.<sup>113</sup> In contrast, mandatory policies result in content rates that are much higher.<sup>114</sup> At QUT, close to 50% of all research content produced by QUT in 2005 had been deposited in the repository by the years end.<sup>115</sup> The number of deposits is expected to grow each year, until close to 100% of research output is retained.

If you do not wish to implement a mandatory deposit policy, it is advisable to conduct extensive advocacy campaigns to make academics aware of your repository and the benefits of depositing.<sup>116</sup> Publicising your repository will result in more content being deposited and will remind authors to deposit their work sooner rather than later.<sup>117</sup>

### ***Full text deposits***

#### **Consider: Will you require the full text of the material to be deposited?**

Some repositories are limited to full text material only. However, other repositories are not so restricted, and also contain abstracts of material. While full text should generally be preferred, the deposit of an abstract may be useful where copyright has been assigned to a publisher who will not permit the author to self-archive.

Where a publisher will not permit self-archiving, an author may:

- (a) post to the repository the bibliographic details of their article so that it may be catalogued, notwithstanding the full text is not available; or
- (b) post both the bibliographic details of their article and a short abstract.

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<sup>111</sup> QUT ePrint repository policy <[http://www.mopp.qut.edu.au/F/F\\_01\\_03.html](http://www.mopp.qut.edu.au/F/F_01_03.html)> at 10 January 2007.

<sup>112</sup> Sale, 'The acquisition of open access research articles'.

<sup>113</sup> Sale, 'Comparison of content policies for institutional repositories in Australia'; Sale, 'The acquisition of open access research articles'; Sale, *The Patchwork Mandate*; Sale, *Generic Risk Analysis*; Harnad, *Generic Rationale and Model for University Open Access Self-Archiving Mandate*.

<sup>114</sup> Sale, 'The acquisition of open access research articles'.

<sup>115</sup> Statistic obtained from Paula Callan, QUT's eResearch Access Coordinator.

<sup>116</sup> See 7.0 Advocacy.

<sup>117</sup> Sale, 'The acquisition of open access research articles'.

The bibliographic details include the title of the article, the name of the author, the date of publication etc. In digital repository terminology, those details are known as “metadata”. Metadata enables a record to be kept of university output. It can also be made available to search engines, which increases the visibility of the article. Finally, metadata allows the author to construct a publication list of their own work.<sup>118</sup> Where a publisher has imposed an embargo period between the date of publication and the date when the material may become available as open access, metadata and/or an abstract can be included from the date of publication, with the material itself becoming available at the conclusion of the embargo period.

Deposit of full text may be mandatory for some material and only optional for others. There may even be different combinations of mandatory and optional deposit requirements for one type of material.

Example: journal article

*Option 1*

- Mandatory to deposit the full text of the article

*Option 2*

- Mandatory to deposit the abstract
- Optional to deposit the full text

*Option 3*

- Optional to deposit either the abstract or the full text

At this stage, it may be useful to consider the following flowchart, in relation to each type of material that you intend to be deposited in the digital repository:

Material:

- ☐ Abstract
  - ☐ Mandatory
  - ☐ Optional
- ☐ Full text
  - ☐ Mandatory
  - ☐ Optional

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<sup>118</sup> Gutteridge and Harnad, *Applications, Potential Problems and a Suggested Policy*; Pinfield, Gardner and MacColl, ‘Setting up an institutional e-print archive’; Raym Crow (2002) The Case for Institutional Repositories: A SPARC Position Paper, Washington: SPARC (The Scholarly Publishing & Academic Resources Coalition) <[http://www.arl.org/sparc/IR/IR\\_Final\\_Release\\_102.pdf](http://www.arl.org/sparc/IR/IR_Final_Release_102.pdf)> at 12 January 2007.

## 3.2 Metadata

Metadata is the information that describes the material deposited in your repository. For example, metadata includes such details as the name of the article deposited and the name of the author of the article. Usually, metadata will be entered into the repository at the time of deposit.

Standardised metadata is important because it enables end users to easily and effectively search, find and retrieve information from the repository.<sup>119</sup> For example, an end user should be able to conduct a search for “Smith” and retrieve any articles written by authors with the name of Smith. What is searched is the metadata describing the content of the repository, not the actual content itself (because this would take too long).

Ideally, a repository should be interoperable with multiple search engines and discovery tools.<sup>120</sup> This would allow different end users to search different databases and still locate material in your repository. Making your repository interoperable increases its visibility and results in a greater number of citations of material in your repository.<sup>121</sup>

The Open Archives Initiative (OAI) is a committee dedicated to promoting interoperability between digital repositories.<sup>122</sup> It has developed the OAI Metadata Harvesting Protocol, which “creates the potential for interoperability between e-print archives by enabling metadata from a number of archives to be harvested and collected together in a searchable database.”<sup>123</sup> The OAI Protocol requires repositories to include metadata fields employed in the ‘unqualified Dublin Core metadata’.<sup>124</sup> The Dublin Core Metadata Initiative (DCMI) is an organisation that encourages the widespread adoption of interoperable metadata standards.<sup>125</sup>

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<sup>119</sup> Pinfield, Gardner and MacColl, ‘Setting up an institutional e-print archive’.

<sup>120</sup> Crow, Institutional Repository Checklist.

<sup>121</sup> Gutteridge and Harnad, *Applications, Potential Problems and a Suggested Policy*; Sale, *Generic Risk Analysis*; Pinfield, Gardner and MacColl, ‘Setting up an institutional e-print archive’; Harnad, *Generic Rationale and Model for University Open Access Self-Archiving Mandate*; Hubbard, ‘SHERPA and Institutional Repositories’.

<sup>122</sup> See <<http://www.openarchives.org>>.

<sup>123</sup> Pinfield, Gardner and MacColl, ‘Setting up an institutional e-print archive’.

<sup>124</sup> See <<http://dublincore.org/documents/dces>>.

<sup>125</sup> See <<http://dublincore.org/about>>.

The unqualified Dublin Core metadata are:

- Title of the article/material;
- Creator – the name(s) of the author/s;
- Subject matter of the material;
- Description of the content of the material;
- Publisher;
- Contributor – a person or corporate contributor to the material’s content;
- Date that the material was created, modified or made available;
- Type – the nature or genre of the material’s content;
- Format in which the material appears;
- Identifier – an unambiguous reference to the material within a given context. Usually material is identified by a string or number conforming to a formal identification system, for example, the International Standard Book Number (ISBN);
- Source – a reference to a resource from which the material is derived;
- Language (if the material is written in a foreign language, then metadata may appear both in English and in that foreign language. The eprints software supports multilingual metadata);
- Relation – a reference to a related resource;
- Coverage – the extent or scope of the content of the material, typically a spatial location, temporal period, or jurisdiction;
- Rights – information about the rights held in and over the material, including intellectual property rights, copyright etc. This information may include whether or not the resource is Creative Commons licensed.<sup>126</sup>

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<sup>126</sup> For more on Creative Commons licences, see 5.2.2.

Metadata is not limited to these baseline requirements. A repository may impose additional metadata fields, such as whether the material has been peer reviewed, whether the full text of the material is available, and the status of the material (published, in press, or unpublished).

EPrints, DSpace and ARROW repository software is OAI-compliant. When installing the software, you will need to configure the metadata formats and customise the user interface. This is simple to do initially, but is more complex to alter once you have started to upload material.<sup>127</sup> Therefore, you should ensure that you are satisfied with the metadata formats selected before you upload too many documents.<sup>128</sup>

It is important that metadata is entered correctly into the repository, otherwise the resource that the metadata is supposed to be describing will not be found by users in a search. Unfortunately, academic authors are often reluctant to provide high-quality metadata, because the process of entering metadata can be mundane and time-consuming.<sup>129</sup> It may therefore be necessary for the repository manager or another staff member to check the quality of metadata when it is entered, to ensure that it is sufficiently detailed and accurate. The EPrints software contains a metadata review and approval process, whereby a system administrator must approve an item before it will become accessible. The administrator can accept, edit or reject a submission at this stage.<sup>130</sup>

You should also make contributing authors aware that it is essential for them to enter accurate metadata so that their work can be easily found and accessed by end-users.

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<sup>127</sup> Pinfield, Gardner and MacColl, 'Setting up an institutional e-print archive'.

<sup>128</sup> Ibid.

<sup>129</sup> Markland, M. and Brophy, P (2005) SHERPA Project Evaluation, Final Report. Manchester: CERLIM (Centre for Research in Library & Information Management) <[http://www.sherpa.ac.uk/documents/SHERPA\\_Evaluation.pdf](http://www.sherpa.ac.uk/documents/SHERPA_Evaluation.pdf)> (hereinafter Markland and Brophy, SHERPA Project Evaluation Final Report).

<sup>130</sup> Pinfield, Gardner and MacColl, 'Setting up an institutional e-print archive'.

### 3.3 Conditions about material quality

#### *Pre-prints and post-prints*

If you have accessed the open access policies of other established repositories, especially in the UK, you may have noticed that they distinguish between material at the ‘pre-print’ stage and material at the ‘post-print’ stage.

A pre-print is the version of an academic paper which is submitted by an author for peer review.<sup>131</sup> A post-print is the final version of an academic paper, incorporating the revisions made as a result of the peer review process or as accepted for publication if no changes were made.<sup>132</sup>

Some repositories allow both pre-prints and post-prints to be deposited, while others prefer post-prints only. Essentially, this is an issue of quality control. The process of peer review allows other experts in the field the opportunity to find and correct any mistakes in an article, thus ensuring authors meet the standards of their discipline. For academics using the repository to determine what prior research has been conducted on a particular topic, peer review provides a level of assurance that the material accessed is accurate.

This does not mean that pre-prints should not be allowed in your repository. However, if you do allow pre-prints to be deposited, you should inform the end user that the material that they are accessing has not been peer-reviewed. This information can be provided in a metadata field.<sup>133</sup>

Important copyright issues arise in relation to the classification of material as a pre-print or a post-print. Some sources will tell you that if permission has been denied by the copyright owner of a post-print for the post-print to be archived, then the pre-print of that article can be archived instead and copyright will not be infringed. This is not the correct position, unless:

- (a) the pre-print is not substantially similar to the post-print such that it will not constitute a copyright infringement; or
- (b) permission has been given by the copyright owner for the pre-print to be deposited.

The reasons why the deposit of a pre-print may infringe the copyright in a post-print are explained at 4.1.1, below.

#### *Format of material*

You may wish to impose conditions about the format of the material deposited in the repository. These conditions may be imposed if you want all the content in the

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<sup>131</sup> See <<http://eprints.qut.edu.au/faq.html>> accessed at 25 September 2006.

<sup>132</sup> Ibid.

<sup>133</sup> Discussed at 3.2.

repository to be consistent, or to ensure that material is provided in only high quality, easily readable formats. Some repositories allow material in a number of formats, including PDF, Microsoft Word and HTML, whereas other repositories will be more restrictive. PDF is the preferred format for reading most documents, but many authors will not have access to the required software to convert their files to PDF themselves.<sup>134</sup> In these situations, it will be necessary to have staff who can help authors to convert their documents into PDF format. Some universities, such as the University of Adelaide and Victoria University, provide instructions and tools on their websites to help authors convert their documents to PDF format.<sup>135</sup> Others, like QUT, allow authors to deposit their article in any format (most commonly authors will deposit Microsoft Word documents) and library staff then convert the file to PDF format for the author.

Repositories will usually acquire from authors the right to alter the format of deposited work for the purposes of the repository.<sup>136</sup> Thus, even if an author deposits work in an unacceptable format, the repository can convert the material into the correct format so that it can nonetheless be included in the repository.

The Integrated Content Environment for Research and Scholarship (ICE-RS) project at the University of Southern Queensland is developing systems and processes to enable documents to be stored and accessed in multiple formats, including HTML (which allows users to skim and sample content more easily) and PDF (which can be configured to make reading long documents a “more comfortable experience”).<sup>137</sup> “ICE...gives every author access to PDF creation software and automatically produces HTML documents, reducing the need for re-processing of documents by web teams.”<sup>138</sup>

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<sup>134</sup> See e.g. Crow, Institutional Repository Checklist.

<sup>135</sup> See <<http://digital.library.adelaide.edu.au/dspace/faq/faq.jsp>> and <<http://eprints.vu.edu.au/guidelines.html>> at 31 January 2007.

<sup>136</sup> See Repository Deposit Licences at 4.2.

<sup>137</sup> ICE-RS <[http://ice.usq.edu.au/introduction/ice\\_rs.pdf](http://ice.usq.edu.au/introduction/ice_rs.pdf)> at 2 February 2007, p5.

<sup>138</sup> ICE-RS <[http://ice.usq.edu.au/introduction/ice\\_rs.pdf](http://ice.usq.edu.au/introduction/ice_rs.pdf)> at 2 February 2007, p6.

### 3.4 Other conditions

You might wish to impose other conditions on the deposit of material.

These can include:

- ☐ All material deposited must have a relationship with the institution
- ☐ Material intended for commercialisation should not be deposited
- ☐ Material containing confidential information should not be deposited
- ☐ Material that would infringe a legal obligation of the author or the institution, or that would infringe a legal right of a third party should not be deposited
- ☐ Material that is restricted due to cultural sensitivity should not be deposited
- ☐ Material in languages other than English may be deposited
- ☐ If the author wishes to post their material on their own website, they should place a link on their homepage to the repository

Generally, the first condition above will be inherent in parts of the policy relating to who may deposit and what materials may be deposited. However, you may also expressly state this condition if you wish.

QUT, Swinburne University, University of Wollongong, University of New South Wales, University of Victoria, James Cook University and Monash University all include the above conditions two, three and four in their open access policies. Conditions three and four are particularly important in ensuring legal obligations are not breached. The USQ policy states that material that is confidential or restricted due to cultural sensitivity should not be included in the repository.

Monash University, Curtin University and QUT policies also contain the final condition above. This condition ensures that visitors to the author's website access the correct version of the material, and also serves to raise awareness about the university's repository.

ANU is the only university of those examined by the OAK Law Project that expressly accepts material in any language.



## Overview: the content deposit process<sup>139</sup>

- 1) Author submits material to the repository and completes the relevant metadata to describe the material.
- 2) At the time of submission, the author must provide a permission agreement (Repository Deposit Licence) that grants the repository the necessary rights to make the material available to end users. (This is covered at 4.2).
- 3) Repository should check that:
  - a. the author is an approved depositor;
  - b. the material is of a kind that can be deposited;
  - c. the material is in the correct format;
  - d. deposit of the material does not infringe copyright;<sup>140</sup>
  - e. the metadata entered is correct; and
  - f. all other conditions have been met (e.g. the repository may require the material to have been peer reviewed).
- 4) The repository may:
  - a. accept the material without changes;
  - b. make any changes necessary to fulfil deposit requirements and accept the material (e.g. the repository may convert the format of the material, or may amend incorrect metadata);
  - c. inform the author that the material must be corrected and resubmitted (and is otherwise rejected); or
  - d. reject the material as inappropriate and delete it from the repository (e.g. if the author is not authorised to deposit).
- 5) Once the material is accepted, it is assigned a unique identifier and a persistent URL to ensure its perpetual availability.

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<sup>139</sup> Based on and developed in accordance with the SPARC Institutional Repository Checklist & Resource Guide, p31-32: Crow, Institutional Repository Checklist.

<sup>140</sup> See 4.0 generally.

## **4.0     Repository – Depositor Relationship**

### **4.1     Copyright issues**

#### ***What is copyright?***

Copyright is a collection of legal rights that attach to an original work when it is created. Copyright allows the copyright owner to control certain acts to do with their material (e.g. copying) and to prevent others from using the protected material without permission.

#### ***Copyright ownership***

The basic principle of copyright ownership is that the first owner of copyright in a work will be the author of the work. However, copyright can be assigned, and many publishers will require an author to assign copyright to them before they will publish a work. If the work has been created by an employee in the course of their employment, the employing institution may take copyright in the work instead of the employee. For work generated by staff and students, you may need to refer to your institution's Intellectual Property Policy to determine whether the author or the institution owns copyright. Where the institution is the copyright owner of the material, it will be easier to mandate deposit of material in your institution's digital repository, as there will be no issues with obtaining permission from publishers or other copyright owners.

#### ***Copyright conditions in your open access policy***

Your open access policy should provide that a depositor must own copyright in the work being submitted to the repository, or must have permission from the copyright owner to deposit. Any mandatory deposit requirements will be subject to this rule.

#### ***Obtaining permission***

An author who is not the copyright owner will need to have the copyright owner's permission to deposit their material in the repository. Often, the copyright owner will be the publisher of the work, where the publishing agreement assigns copyright to the publisher. It is important to check the publishing agreement carefully, because some agreements will contain terms expressly permitting an author to self-archive their work. A publisher may also indicate on their website whether or not they will allow authors to self-archive their work. It is a good idea to confirm with the publisher any policy statements made on their website in this regard. The SHERPA List and the forthcoming OAK List provide a directory of the copyright and self-archiving policies of journal publishers in the UK, USA and Australia.

Where the publishing agreement and the publisher's website are silent about self-archiving, it will be necessary for authors to obtain an express permission from the publisher by specifically requesting permission to deposit their work in the digital repository. A safe form of express permission is a licence allowing the author to make their work available in an open access digital repository. An author may also attach an author's addendum to their publishing agreement, to include terms allowing self-archiving in the agreement. This is discussed in more detail at 4.2.1 Power to enter into a Repository Deposit Licence.

Ideally, permission from a copyright owner will cover two aspects of the deposit process:

- (1) permission to make the work available in the digital repository; and
- (2) permission to grant end-users rights to reuse the work on certain terms.

Without the second part of the permission, the work can only be made available in the digital repository for end-users to access and view (in accordance with general principles of copyright law), and to reuse only if they are acting under one of the fair dealing exceptions to copyright infringement in the *Copyright Act 1968*.

Even where a publisher to whom copyright has been assigned has an agreement or policy that allows self-archiving, this may not extend to granting the second part of the permission. It may be necessary for depositors to seek the second part of the permission from the publisher individually.

If the copyright owner does grant the second part of the permission, they will determine what rights may be granted to end-users to reuse the work. For example, they may:

- allow the depositor to attach a Creative Commons licence to the work, and state which Creative Commons licence will be appropriate or inappropriate; or
- allow the depositor to grant the repository the right to enter into licensing arrangements with end-users; or
- allow the depositor to grant to end-users the right to print copies of the work (reproduce the work) for non-commercial use.

The granting of rights to end-users is discussed in more detail at 5.2.

### ***Restrictions***

If the depositor does not own copyright, or does not have permission to deposit, you can impose the following restrictions:

- ☐ Material cannot be deposited at all; or
- ☐ Material cannot be deposited in full; or
- ☐ Material should still be deposited, but access will be restricted.

Monash University, ANU, Victoria University, Swinburne University, Flinders University and University of Melbourne all have open access policies that provide that material cannot be deposited at all unless the depositor owns copyright or permission is obtained from the copyright owner (usually the publisher). The policies at USQ and Curtin University state that the material cannot be deposited in full unless the depositor owns copyright or has permission to deposit. Where material is not deposited in full, this may mean that only the abstract or the metadata of the material is deposited.<sup>141</sup>

Where a publisher will not allow material to be openly accessible, they may still allow deposit of it into a repository if access is restricted. This will depend upon the wording of the publishing agreement. The most common scenario is where the publisher will allow open access eventually, after an embargo period. An embargo period is a period during which the publisher prohibits open access, but after which an author may self-archive. The most common length of time for an embargo period is six months, although some publishers will insist upon one year.<sup>142</sup> Where an embargo period is imposed, an author may be permitted to deposit the work, but have access blocked to all but the metadata.<sup>143</sup> Authors are usually more keen to deposit their work soon after they have written it or soon after publication.<sup>144</sup> However, by the time an embargo period has passed they may have lost interest in depositing their work.<sup>145</sup> If authors can deposit their work immediately upon completion, but have access restricted until after the embargo period, then they can be sure that they are not breaching the publisher's agreement. Authors will also be satisfied that the repository can automatically make their work publicly available at the end of the embargo period, without the author needing to do anything further. This increases the likelihood of articles actually being placed in the repository.

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<sup>141</sup> For more information, see 3.1 and 3.2.

<sup>142</sup> Sale, 'The acquisition of open access research articles'; see, for example, the Exclusive Licence Form of Blackwell Publishing, which impose an embargo period of 12 months (<<http://mc.manuscriptcentral.com/societyimages/avj/AVJ-ELF-06.pdf>> at 12 January 2007).

<sup>143</sup> Sale, *Generic Risk Analysis*; Harnad, *Generic Rationale and Model for University Open Access Self-Archiving Mandate*.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

#### 4.1.1 Pre-prints and post-prints: clarifying the issues<sup>146</sup>

Some commentators suggest that where:

- copyright in a post-print has been assigned to a publisher; and
- the publisher has refused to give the author permission to deposit their work in the repository;

the author may deposit the pre-print of the article without the publisher's permission.

This position is based on the assumption that copyright has been assigned in the post-print only, and the pre-print is a completely different article in which the author retains copyright and can deal with as they like.

**This is not correct.**<sup>147</sup>

When the publisher takes copyright in the post-print, they take the exclusive right to reproduce and communicate the material or to allow someone else to reproduce/communicate it. If someone reproduces or communicates the material without the publisher's permission, this will be a copyright infringement and monetary penalties may be imposed.

#### *What is a reproduction?*

There will be a reproduction of the copyrighted work where there is "objective similarity between an alleged reproduction and the copyrighted work, such that one is recognisable as a copy of the other."<sup>148</sup> A reproduction will infringe copyright where it reproduces a substantial part of the copyrighted work, both in terms of quality and quantity.<sup>149</sup>

#### *What is a communication?*

A communication, in the copyright context, means to "make available online or electronically transmit [to the public]."<sup>150</sup> Thus, the act of uploading an article to a digital repository that is available for access via the internet or onto a website that is publicly accessible will constitute a communication at law.

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<sup>146</sup> See: Michael Carroll, *Copyright in "Pre-Prints" and "Post-Prints"* (blog) (3 May 2006) Carrollogos <<http://carrollogos.blogspot.com/2006/05/copyright-in-pre-prints-and-post.html>> at 27 November 2006.

<sup>147</sup> Ibid.

<sup>148</sup> Jill McKeough, Andrew Stewart and Philip Griffith, *Intellectual Property in Australia* (3<sup>rd</sup> edition, 2004), 214.

<sup>149</sup> Ibid, 216.

<sup>150</sup> Section 10(1) *Copyright Act 1968* (Cth); see also Jill McKeough, Andrew Stewart and Philip Griffith, *Intellectual Property in Australia* (3<sup>rd</sup> edition, 2004), 228-229.

### *Can a pre-print be a reproduction of a post-print?*

Even though the pre-print of an article would have preceded the post-print, it will be deemed to be an infringing reproduction of the post-print if:

- it is posted online or remains online after copyright is assigned in the post-print;
- the author does not have permission from the publisher to post the article (either the pre-print or the post-print) online; and
- the pre-print is substantially similar to the post-print.

In reality, there will usually be little difference between the pre-print and the post-print of an article, such that the requirement of objective similarity will be satisfied. Therefore, it is important to check the publisher's agreement and policy carefully. If the publisher will not allow a post-print article to be archived then the pre-print should not usually be archived either. A publisher may in fact allow a pre-print to be archived, despite prohibiting archival of the post-print. In this situation, it is of course acceptable to deposit the pre-print in a digital repository even if it is substantially similar to the post-print. Whether or not either version can be deposited will depend on what the publisher allows.

#### 4.1.2 Copyright and conference papers

Many institutions, including ANU, Curtin University, University of Sydney and QUT, allow conference papers to be included in their digital repository. As far as copyright is concerned, conference papers are often perceived to be a difficult area. However, at law, copyright in a conference paper will rest on the same principles that apply to copyright in a journal article. The author of a conference paper will own the copyright in that conference paper, unless copyright is assigned to another party such as the conference organisers.

The University of Tasmania ePrints website provides the following information about conference papers and copyright –

Often authors retain copyright in conference papers even though the conference organisers might compile them and distribute copies. However, some major conferences publish the proceedings as a journal or a monograph and sometimes require authors to assign or exclusively licence their copyright to them.<sup>151</sup>

Authors of conference papers should check with the conference organisers as to the terms under which papers are submitted to or delivered at the conference. The conference may have issued conditions or guidelines about copyright ownership of conference papers, conference proceedings and conference materials. Some conference organisers will seek an assignment of copyright, in which case authors should check the conference policy on self-archiving or seek permission from the conference organisers to self-archive, just as they would seek permission from a publisher to self-archive a journal article. Other conference organisers will allow authors to retain copyright in their conference papers. For example, the Australian Association for the Teaching of English (AATE) and the Australian Literacy Educator's Association (ALEA) provided that for their 2005 National Conference Publications, "copyright of a conference paper with regards to publication in other forms of journals, texts or magazines remains with the author."<sup>152</sup>

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<sup>151</sup> <<http://www.utas.edu.au/copyright/eprints/faq.html#thesis>> at 14 March 2007.

<sup>152</sup> <<http://www.alea.edu.au/conf/papers2005/review.htm>> at 14 March 2007.

### **4.1.3 Moral rights**

#### ***What are moral rights?***

In addition to copyright, an author of a literary, musical, dramatic or artistic work or a cinematographic film has moral rights in their work, which arise automatically. There are three primary moral rights:

- the right to have authorship attributed to the work;
- the right not to have the work falsely attributed; and
- the right of integrity of authorship, which is the right not to have the work treated in a derogatory manner.

Moral rights cannot be transferred or assigned, but an author can consent to persons using the author's work in a way that would otherwise infringe those moral rights.

#### ***Dealing with moral rights issues relating to digital repositories***

A depositor will usually hold moral rights in the material that they are depositing into the digital repository. Where the depositor is one of a number of co-authors of the material, the co-authors will also hold moral rights. A depositor will not need permission from other moral rights holders to deposit the material into the digital repository, unless he or she anticipates a likely infringement of those moral rights.



## 4.2 Repository Deposit Licences

You should require authors to enter into a Repository Deposit Licence before they can deposit material into your repository. This licence is important because it establishes a formal relationship between the repository and the author. It defines what the repository can and cannot do with the deposited material, informs the author about the purpose of the repository, and reassures the author that the repository does not take copyright ownership in the work.

The Securing a Hybrid Environment for Research Preservation and Access (SHERPA) Project, a UK-based project that sought to facilitate worldwide dissemination of research by developing open-access institutional repositories in research universities, issued a report in 2004 on the use of Repository Deposit Licences.<sup>153</sup> They found that “few e-print repositories establish formal agreements with depositing authors, because such agreements are thought to discourage authors from depositing.”<sup>154</sup> More than a third of the repositories surveyed by SHERPA took it on trust that the author had the right to deposit the document.<sup>155</sup> Legally, this is a risky position to take, because if an author does not in fact have the right to deposit the work (e.g. has not obtained permission from the publisher) and deposits the work anyway, then copyright liability will attach not only to the author, but to the repository and end-users as well. A Repository Deposit Licence clarifies the legal positions of the depositing author, the repository and to some extent end-users, and provides a safety-net for the repository to avoid copyright infringement.

The Repository Deposit Licence should be available online for authors to enter into at the time of depositing their material. Because it is crucial for the repository to get the necessary assurances from the author in order to deal with the deposited work, the licence should take the form of a click-wrap website agreement. This means that before an author can deposit their work, they must read the terms and conditions of the licence and click an ‘I accept’ button or they will be prevented from proceeding.

As the author is required to accept the Repository Deposit Licence before they can deposit, it is important that they understand what they are agreeing to. Therefore, the licence should be as clear and easy to follow as possible. Additionally, you should educate staff and students about the legal implications of making their work available in the repository, and about Repository Deposit Licences and what they entail.

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<sup>153</sup> Gareth Knight (2004) SHERPA Project Document – Report on a deposit licence for E-prints <[http://www.sherpa.ac.uk/documents/D4-2\\_Report\\_on\\_a\\_deposit\\_licence\\_for\\_E-prints.pdf](http://www.sherpa.ac.uk/documents/D4-2_Report_on_a_deposit_licence_for_E-prints.pdf)> at 11 January 2007.

<sup>154</sup> Ibid, p1.

<sup>155</sup> Ibid.

Your Repository Deposit Licence should set out:

- ☐ The author grants to the repository the non-exclusive right to reproduce, adapt, publish, electronically communicate and distribute the material for the purpose of making the material available to end-users in the digital repository;
- ☐ The author represents that they are the copyright owner and therefore have the authority to grant to the repository the rights contained in the licence (i.e. the right to reproduce, publish etc – as set out above), or that they have the permission of the copyright owner to grant the necessary rights;
- ☐ The author consents to any act or omission by the repository that would otherwise infringe the author's moral rights in the material, provided that the act or omission is directly related to the technical operation or organisation of the digital repository;
- ☐ The repository will clearly identify the title and author of the material deposited into the digital repository, in accordance with the author's moral right of attribution;
- ☐ The repository may keep a copy of the material for security, back-up and preservation;
- ☐ The author represents that the work is original (i.e. not copied from someone else);
- ☐ The author represents that the material does not infringe upon someone else's copyright;
- ☐ Where the material has been sponsored by another organisation (e.g. a funding body), the author represents that they have fulfilled any obligations required under the agreement with the sponsor about the use of the material;
- ☐ The repository is not legally responsible for any mistakes, omissions, or legal infringements within the deposited material;<sup>156</sup>
- ☐ Assenting to the licence and depositing material in the repository does not transfer copyright to the repository, so the author retains the right to make use of current and future versions of the work elsewhere;

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<sup>156</sup> Gareth Knight (2004) SHERPA Project Document – Report on a deposit licence for E-prints <[http://www.sherpa.ac.uk/documents/D4-2\\_Report\\_on\\_a\\_deposit\\_licence\\_for\\_E-prints.pdf](http://www.sherpa.ac.uk/documents/D4-2_Report_on_a_deposit_licence_for_E-prints.pdf)> at 11 January 2007, p1.

- ☐ The repository will not alter the material (except as allowed by the licence);
- ☐ The author has the right to provide updated versions of the work;
- ☐ Where the material has been published, citation of the published version should be included and clearly visible;
- ☐ Conditions under which administrators can remove material from the repository (e.g. where it is discovered that the research contained in the work is falsified);
- ☐ Whether the repository administrators have any obligation to take legal action on behalf of the author and/or copyright owner if intellectual property rights in the material are breached; and
- ☐ The basis on which the material is made available, and the rights of end-users to access, use and further distribute the work. These rights can be determined in two ways:
  - ☐ Author deals only with the repository, so the rights of end-users are determined by the scope of the Repository Deposit Licence;<sup>157</sup> or
  - ☐ Author deals with end-users through a direct licence (called an Author Distribution Agreement), for example through a Creative Commons Licence.<sup>158</sup>

It may be necessary for a repository manager to check some of the assurances made by authors in the Repository Deposit Licence, in particular, that proper permissions have been obtained from publishers where relevant.<sup>159</sup>

Although your Repository Deposit Licence needs to include all of the above terms and conditions, this does not mean that the licence must be long and complicated. A short guide to Repository Deposit Licences is included in Appendix Two, as well as the OAK Law Project Sample Repository Deposit Licence for Publications. Additionally, Appendix Two contains the SURFfoundation Licence to Deposit in a Digital Repository, which is an example of a Repository Deposit Licence that is being implemented at an international level.<sup>160</sup> The SHERPA sample e-print licence is

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<sup>157</sup> See 5.2.1.

<sup>158</sup> See 5.2.2.

<sup>159</sup> See 6.5.

<sup>160</sup> The SURFfoundation, based in the Netherlands, is the collaborative organisation for higher education institutions and research institutes aimed at breakthrough innovations in information and communication technologies: see <<http://www.surfoundation.nl/smartsite.dws?ch=ENG&id=5290>> at 10 August 2007.

another useful example and can be found on the SHERPA website.<sup>161</sup> The University of Adelaide, the University of New South Wales and Flinders University all make their Deposit Licences available on their websites.

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<sup>161</sup> <[http://www.sherpa.ac.uk/documents/D4-2\\_Report\\_on\\_a\\_deposit\\_licence\\_for\\_E-prints.pdf](http://www.sherpa.ac.uk/documents/D4-2_Report_on_a_deposit_licence_for_E-prints.pdf)> at 11 January 2007.

#### 4.2.1 Power to enter into a Repository Deposit Licence

In order to deposit material in the digital repository and enter into the Repository Deposit Licence, the depositor must:

- own copyright or be authorised by the copyright owner (which may be the publisher) to deposit the material into the digital repository; and
- have the authority to grant to the repository the rights necessary to make the material available for access by end users in the digital repository.

Additionally, where your institution's open access policy is to create broad dissemination and reuse of material, you may want to allow (or encourage depositors to allow) end-users to exercise rights in relation to the material that go beyond mere access and viewing in the digital repository. If further rights are to be granted to end-users, the depositor must also ensure that they have all necessary rights and authorisations to be able to grant rights to end users to make appropriate use of material deposited in the digital repository.

Issues arise where copyright has been assigned to a publisher and the publisher refuses to give, or is reluctant to give, permission to the author to deposit the material and to grant the repository and end-users the necessary rights to deal with the material.

As repository manager, you can do two things to address this problem:

- be very careful about checking that authors actually do have permission to deposit their material in the repository and enter into a Repository Deposit Licence; and
- encourage authors to be more proactive in asserting their rights when dealing with publishers.

*What can authors do to assert their rights?*

Where possible, resist assigning copyright to a publisher

Instead of assigning copyright to a publisher, an author may instead issue the publisher with a non-exclusive licence to publish the work in the particular journal that the publisher represents. A licence gives permission to someone to deal with the work for certain purposes, without actually assigning any of the copyright to them. A licence allows the author to retain all copyright and all rights necessary to archive their work and enter into a Repository Deposit Licence. This is the best option for authors as it leaves them with the most rights. However, it can be extremely difficult to get a publisher to agree to these limited terms, particularly when the publisher is used to having copyright assigned to them.

## Publish in an open access journal

Open access journals are journals that publish material online and in accordance with the principles of open access. This means that they typically allow the author to retain copyright. The published work will often be available to readers under a licence that allows use, distribution and reproduction of the work in any medium, provided that the original work is properly cited. Two examples of successful open access publishers are the Public Library of Science (PLOS),<sup>162</sup> which is a non-profit publisher, and BioMed Central,<sup>163</sup> which does publish for profit. Both licence published material under a licence equivalent to the Creative Commons Attribution Licence.<sup>164</sup> An open access publisher is a good option for authors because the publisher will generally be amenable, and may even encourage, the author to deposit their work in an institutional or disciplinary repository. A listing of open access journals can be found online with the Directory of Open Access Journals (DOAJ), hosted by Lund University Libraries.<sup>165</sup> However, authors should be aware that some open access publishers including BioMed Central and PLOS, which are called “Gold” publishers, will charge the author a publication fee or an “article processing fee” for publishing the article, since costs are not recovered from subscriptions fees as per the usual model.<sup>166</sup>

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<sup>162</sup> <<http://www.plos.org>>.

<sup>163</sup> <<http://www.biomedcentral.com>>.

<sup>164</sup> See 5.2.2 and <<http://www.creativecommons.org.au>> for more information about the Creative Commons Attribution Licence. For the PLOS licence, see <<http://www.plos.org/journals/license.html>> (accessed on 6 December 2006), and for the BioMed Central licence, see <<http://www.biomedcentral.com/info/about/license>> (accessed on 6 December 2006).

<sup>165</sup> See <<http://www.doaj.org/>> at 26 March 2007.

<sup>166</sup> See *OAK Law Report*, 81:

“At least two different publishing models have evolved in relation to OA. One is the ‘gold’ publishing model, such as the Public Library of Science (PLOS) which explains its model in the following way:

‘To provide open access, PLOS journals use a business model in which our expenses — including those of peer review, of journal production, and of online hosting and archiving — are recovered in part by charging a publication fee to the authors or research sponsors for each article they publish.’ <<http://www.plos.org/journals/pubfees.html>> at 20 April 2007.

‘Our goal is not to have publication charges place any additional financial burden on researchers. Publication is a fundamental part of the scientific and medical research process, and the costs of publication should therefore be treated as a small but essential part of the cost of research. Many of the funding agencies that support research now recognise this view.’ <<http://www.plos.org/about/faq.html#pubquest>> at 20 April 2007.

The other is the so called ‘green’ model:

...many researchers opt instead for the ‘Green Road’. Rather than publishing with an OA publisher, they continue to publish in traditional subscription-based scholarly journals, but then ‘self-archive’ an electronic copy of their papers, either on their home pages, or in an e-print archive such as their institutional repository or a centrally-based archive like PubMed Central (cf. sources) or arXiv (cf. sources).”

## Obtain a licence

If copyright must be assigned, or already has been assigned to the publisher, the author may ask the publisher to licence back to them the necessary rights to allow them to deposit their work in a digital repository.

Some institutions and open access advocates have drafted author addenda that can be attached to publishing contracts in order to alter the contract and allow the author to retain certain key rights. The three main addenda that have been circulated online are:

- The Scholarly Publishing and Academic Resources Coalition (SPARC) Author's Addendum;<sup>167</sup>
- The Science Commons Scholar's Copyright OpenAccess-CreativeCommons 1.0 Addendum;<sup>168</sup> and
- MIT Amendment to Publication Agreement.<sup>169</sup>

The MIT addendum gives the author rights to use, reproduce, distribute and create derivative works from the article, provided the rights are exercised in connection with the author's teaching and scholarly works or for the author's academic and professional activities. The addendum also allows the author to make, or authorise others to make, the final published version of the article available in a digital repository. The same rights are given to the author's employing institution. Unfortunately, the MIT addendum does not seem to anticipate that the author will need not only the right to self-archive their work, but also the authority to grant to end-users the necessary rights to deal with the deposited work.<sup>170</sup> Thus, the author may not have the full authority necessary to enter into the Repository Deposit Licence as far as end-users are concerned. If an author has attached the MIT addendum to their publishing agreement, the repository must be careful in allowing end-users access to the work – you may still need to check with the publisher that the work is being dealt with in an acceptable way.

The SPARC Addendum and the Science Commons Addendum both give the author the right to deposit their work in open-access digital repositories and also to grant to others the right to make any non-commercial use of the work so long as the author is

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<sup>167</sup> <[http://www.arl.org/sparc/author/docs/AuthorsAddendum2\\_1.pdf](http://www.arl.org/sparc/author/docs/AuthorsAddendum2_1.pdf)>.

<sup>168</sup> <<http://www.sciencecommons.org/projects/publishing/scaa-openaccess-creativecommons-1.0.pdf>>. The Science Commons has also drafted two other addenda – the Scholar's Copyright OpenAccess-Publish 1.0 Addendum <<http://www.sciencecommons.org/projects/publishing/scaa-openaccess-publish-1.0.pdf>>, which limits the author's use to professional activities (rather than just non-commercial activities), and which refers to making the work available on a 'web server' (as opposed to using the term 'repository'), and the Scholar's Copyright OpenAccess-Delay 1.0 Addendum <<http://www.sciencecommons.org/projects/publishing/scaa-openaccess-publish-1.0.pdf>>, which imposes a delay of 6 months before the author can make the published version of the work freely available.

<sup>169</sup> <<http://libraries.mit.edu/about/scholarly/amendment.pdf>>.

<sup>170</sup> For further discussion, see Peter B. Hirtle, 'Author Addenda: An Examination of Five Alternatives' (2006) 12(11) *D-Lib Magazine*, Cornell University Library <<http://www.dlib.org/dlib/november06/hirtle/11hirtle.html>> at 4 December 2006.

credited and the journal is cited as the source of first publication.<sup>171</sup> This grants to the author the necessary rights to enter into the Repository Deposit Licence as it applies to both the repository and to end-users. The author is only limited by the 'non-commercial' term in the addendum. It means that if the author wants to licence their work to end-users through a Creative Commons Licence, then that licence must be limited by a non-commercial use term.<sup>172</sup>

Some authors may question whether publishers will be amenable to including an addendum in their agreement. Fortunately, most publishers will be quite willing to include the addendum once they understand that its purpose is to allow the author to place a copy of their article on their institution's website, and not to publish the same article in a competitor's journal or digital repository.<sup>173</sup>

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<sup>171</sup> Ibid.

<sup>172</sup> See 5.2.2.

<sup>173</sup> Kerin Friedman, Alex Golub, Kambiz Kamrani and Christopher Kelty, *Author's rights agreements: how to make them work for you* (2006) Open Access Anthropology <<http://blog.openaccessanthropology.org/2006/12/02/authors-right-agreements-how-to-make-them-work-for-you/>> at 4 December 2006; see also: Markland and Brophy, SHERPA Project Evaluation Final Report.



## 5.0 End-Users

### 5.1 Access to the repository

**Consider: who should have access to your repository?**

- ☐ General public
- ☐ Anyone within the institution (e.g. all staff and students)
- ☐ A select group within the institution (e.g. staff only, or research staff only, or all staff and PHD students only)
- ☐ Only people “signed up” to the repository, which may include people from other approved institutions

It may be appropriate for different groups to have access to different material. You may wish to grant some groups wide access rights, but only allow other groups much narrower access rights. Thus, once you have considered who will have access to your repository, you should ask: what will be the scope of their access?

- ☐ The same access rights apply to all material in the repository and to all end-users;
- ☐ Some material will be widely accessible to end-users, but access to other material will be limited depending on the status of the end-user; or
- ☐ The scope of access to the material will be decided in agreement with the depositor.

If you chose to only have one over-arching access principle, you should ensure that the depositor is aware of this and has agreed to it before material is deposited.

If you want to have different access principles applying to different material and different groups of end-users, you should clearly define the scope of these access rights. For example, you may want to make journal articles available to everyone, but technical reports only available to staff in the relevant field.

Finally, the scope of access can be determined in agreement with the depositor. Some authors may be comfortable with allowing end-users wide access rights, whereas others may prefer their material to be available only to certain groups of end-users. It is important to remember however, that if you take this final option and allow the depositor to choose who may access their material, you will need to be careful in managing the repository and all the different levels of access provided.

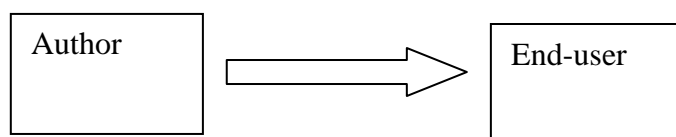
When determining access rights and whether or not access should be restricted, you should refer back to your stated commitment to open access and ensure that the level of access you are providing is both lawful and accords with your fundamental objectives.

## 5.2 Scope of rights to use

### *Granting rights to end-users*

The rights granted to an end-user to deal with the material will depend on what the copyright owner permits. Broadly, there are two types of arrangements for granting rights to end-users:

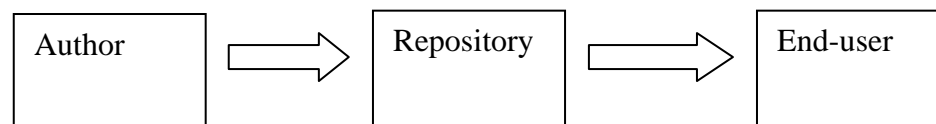
#### 1. Author to end-user



The author licenses directly to end-users (for example, by attaching a Creative Commons licence to the work). This licence is called an Author Distribution Agreement.<sup>174</sup> The author must be the copyright owner or have permission from the copyright owner to grant this licence. The terms of the licence to end-users must be consistent with the copyright owner's permission.

The repository merely makes the material available to end-users.

#### 2. Author to repository; repository to end-user



The author gives a licence to the repository to:

- make the material available in the digital repository; and
- license the material to end-users (perhaps on certain conditions).<sup>175</sup>

The author must be the copyright owner or have permission from the copyright owner to grant these rights to the repository.

The repository licenses the material to end-users on terms consistent with the author's grant of rights.<sup>176</sup> The repository may attach a Creative Commons licence to the material, if this is within the scope of the rights granted to the repository.

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<sup>174</sup> See 5.2.2 Author - End-User Relationship.

<sup>175</sup> The licence given by the author to the repository will take the form of a Repository Deposit Licence. See 4.2 and Appendix 2.

<sup>176</sup> See further, 5.2.1.

### ***What rights may be given to end-users?***

For example, the rights given to an end-user may be to:

- ☐ View and use for specified (limited) purposes; or
- ☐ View, use, and further distribute (usually non-commercially).

You should provide a framework that best ensures the end-user understands their rights before accessing any material. This may take the form of a click-through screen that they must read before being allowed access to the material, which sets out their rights and any limitations on use of the material.<sup>177</sup> You may also wish to include a metadata field that sets out whether or not the material is licensed under a Creative Commons licence (or another form of open licence) and any important restrictions on use of the material.

#### **5.2.1 Repository – End-User Relationship**

The Repository Deposit Licence, agreed to by the author at the time of deposit, will set out the access rights that end-users may have in relation to the material deposited.<sup>178</sup> You will need to ensure that end-users do not deal with the material in a way that goes beyond the rights granted by the Repository Deposit Licence. An agreement should be entered into between the repository and end-users to this effect. This is called a Repository Distribution (End User) Agreement, and it grants rights to end-users to access and re-use deposited material that are consistent with the Repository Deposit Licence.

The Repository Distribution (End User) Agreement should be clearly displayed on the repository website, so that it is brought to the end-user's attention. It should be in a click-wrap form, which requires the end-user to read the terms and conditions of the agreement and to click an 'I agree' or 'I accept' button before they are permitted to proceed to the repository. It is important to obtain the end-user's assent to the terms of the Repository Distribution (End User) Agreement because it takes the form of a contract, which requires agreement by both parties to be binding.

#### **5.2.2 Author – End-User Relationship**

Alternatively, an author who retains copyright in the material, or who has permission from the copyright owner, may wish to directly authorise an end-user to use their

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<sup>177</sup> See 5.2.1

<sup>178</sup> See 4.2.

work. They may therefore enter into an Author Distribution Agreement, which grants a non-exclusive licence to end-users to use the work subject to any conditions imposed by the author. One example of this is the Creative Commons Licence.<sup>179</sup>

### *What is a Creative Commons Licence?*

A Creative Commons Licence gives end-users rights in relation to a work, subject to certain conditions as selected by the author. The rights given are the rights to copy, distribute, display and perform the work.

The conditions that may be imposed are:

- Attribution – this applies to every Creative Commons licensed work and means that whenever the work is copied or redistributed the author must be reasonably credited;
- Non Commercial – the work can be used for non-commercial purposes only;
- No Derivatives – only exact copies of the work (not derivative works based on the original work) can be made, displayed, distributed and performed; and
- Share Alike – end-users may distribute derivative works, but only under a licence identical to the one that governs the original work.

These conditions may be combined in multiple different ways. For example, an author may wish to license their work under an Attribution-Share Alike Licence, which allows others to use the work provided they credit the author properly and they license any derivative work they create under the same type of Creative Commons Licence. The only conditions that are incompatible and may not feature in the same licence are the No Derivatives and Share Alike terms. The Non Commercial term may appear frequently in Creative Commons Licences chosen by self-archiving authors, particularly if the author is required to include this term by a publishing agreement or an author addendum attached to a publishing agreement.

A good example of an open access policy that provides for authors directly licensing to end-users is MIT's DSpace Licence.<sup>180</sup> There, the depositing author must enter into a Non-Exclusive Deposit Licence with MIT, which allows the work to be included in the repository. The author is also given the option of entering into a Creative Commons Licence to apply to end-users, through a Creative Commons form which is built into DSpace.

You may wish to expressly state in your open access policy that authors have the option of entering into an Author Distribution Agreement with end-users in addition to the Repository Deposit Licence agreement entered into with the repository.

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<sup>179</sup> See <<http://www.creativecommons.org.au>>.

<sup>180</sup> See <<http://libraries.mit.edu/dspace-mit/build/policies/license.html>> at 15 November 2006.

## 6.0 Technical Considerations

### 6.1 Software

There are several software packages available to help you create and maintain a digital repository,<sup>181</sup> including EPrints<sup>182</sup> (from Southampton University), DSpace<sup>183</sup> (from MIT) and Fedora<sup>184</sup> (from Cornell and the University of Virginia). The EPrints, DSpace and Fedora software are made freely available for anyone to use.<sup>185</sup>

All the software packages are designed to be easy to use. However, some institutions have found that while “other library staff can perform much of the policy-based component of the repository, setting up the repository technical infrastructure – even using a largely turn-key solution such as the EPrints software – requires the assistance of a technical administrator.”<sup>186</sup> The staff time required to install and configure the repository software is approximately four to five days – one to two days for software installation, and around three days for web interface customisation.<sup>187</sup>

The ARROW project, led by Monash University in association with National Library of Australia, University of New South Wales and Swinburne University of Technology, was funded to “identify and test a software solution or solutions to support best practice institutional digital repositories comprising a range of content types.”<sup>188</sup> To date, ARROW has developed software called VITAL (using Fedora software as a base), which supports six content types and complies with open standards.<sup>189</sup> ARROW also intends to develop software tools to support deposit of non-traditional repository content, such as data and creative works.<sup>190</sup>

### 6.2 Costs

Repository software can be obtained and installed for free, and can run on a basic hardware configuration. However, funds may need to be expended on improved hardware, as “disk storage, server capacity, and perhaps other specifications would

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<sup>181</sup> For a comparison of the different software packages available, see Open Society Institute (2004) A Guide to Institutional Repository Software (3<sup>rd</sup> ed) <[http://www.soros.org/openaccess/pdf/OSI\\_Guide\\_to\\_IR\\_Software\\_v3.pdf](http://www.soros.org/openaccess/pdf/OSI_Guide_to_IR_Software_v3.pdf)> at 11 January 2007.

<sup>182</sup> See <<http://www.eprints.org>> at 11 January 2007.

<sup>183</sup> See <<https://dspace.mit.edu>> at 11 January 2007.

<sup>184</sup> For more information see <<http://www.fedora.info/index.shtml>> at 14 February 2007 and <<http://www.dcc.ac.uk/resource/technology-watch/fedora>> at 29 November 2006.

<sup>185</sup> See EPrints <<http://www.eprints.org>> at 11 January 2007; DSpace <<http://www.dspace.org/>> at 14 February 2007; and Fedora <<http://www.fedora.info/index.shtml>> at 14 February 2007.

<sup>186</sup> Crow, Institutional Repository Checklist.

<sup>187</sup> Ibid. See also Pinfield, Gardner and MacColl, ‘Setting up an institutional e-print archive’.

<sup>188</sup> ARROW Stage 2 Public Project Description, August 2006, <<http://www.arrow.edu.au/docs/files/ARROW%20Stage2%20PublicDescription.pdf>> at 14 February 2007.

<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

need to be upgraded as the repository moved from a pilot stage into public operation and heavy use.”<sup>191</sup>

There will be some costs associated with acquiring technical staff to assist in installing the repository software. Most labour costs, though, will relate to non-technical staff. In particular, staff will need to be appointed and trained in the ongoing management of the repository, which includes assisting authors to deposit their work and checking copyright permissions from publishers. Money may also need to be spent in advocacy and marketing the repository.<sup>192</sup>

### 6.3 Uploading material

Your open access policy should provide that it is the responsibility of authors and researchers to upload their material to the repository. However, you should develop an online guide to inform your authors of how to submit to the repository. This will be a technical guide, rather than a legal one, and should address the process of attaching and uploading a document.<sup>193</sup> It is important that authors clearly understand how to upload their material and what they are actually uploading, because evidence shows that the process can often be confusing for depositors. A survey into deposits in the NIH repository revealed that 24% of authors surveyed claimed to have submitted the full text of their material to the repository, when in fact many had just posted their abstracts or believed that the journals had done the posting on their behalf.<sup>194</sup>

### 6.4 Organising material

Once you have decided what material will be deposited, make sure you know how it will be organised. Some institutions, such as QUT, require material to be organised in the repository according to the same categories used for the reporting of research to the Department of Education, Science and Training (DEST).<sup>195</sup> The four DEST research publication categories are: Books, Book Chapters, Refereed Journal Articles and Refereed Conference Papers (provided all materials meet the DEST definition of research).<sup>196</sup> Material may also be organised according to discipline (e.g. Science, Law etc).

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<sup>191</sup> Crow, Institutional Repository Checklist.

<sup>192</sup> See 7.0.

<sup>193</sup> See, for example, <<http://eprints.library.qut.edu.au/depositguide.html>>.

<sup>194</sup> Paul Hutchings, *Open Access now Openly Accepted: a study of NIH authors* (2006) Kindle Research <[http://www.kindleresearch.com/wp-content/documents/Kindle\\_Online\\_Script.doc](http://www.kindleresearch.com/wp-content/documents/Kindle_Online_Script.doc)> at 11 January 2007 (hereinafter Hutchings, *Open Access now Openly Accepted*).

<sup>195</sup> See, for example, <<http://www.research.qut.edu.au/data/pubcollections/dest/>>.

<sup>196</sup> Ibid.

## 6.5 Managing the repository

Once material is uploaded to the repository, it is the responsibility of the institution to manage the repository and the material in the repository.

Responsibilities may include:<sup>197</sup>

- ☐ Technical maintenance of the repository;
- ☐ Assisting authors to deposit their work into the repository;
- ☐ Helping authors convert their files to PDF or other accepted digital formats;
- ☐ Checking that documents are uploaded to the repository correctly;
- ☐ Checking (or even entering) metadata;
- ☐ Performing copyright checks;
- ☐ Removing any unauthorised material for the repository;
- ☐ Helping end-users access material in the repository;
- ☐ Assisting authors and end-users with queries about the repository and the associated licences; and
- ☐ Publicising the repository to staff and students.

Ideally, a repository manager should be appointed to deal with these responsibilities. For example, MIT has hired a part-time Scholarly Publishing Consultant to advise faculty about their open access options within scholarly publishing.<sup>198</sup> QUT has a fulltime eResearch Access Coordinator, who manages QUT's digital repository for research publications, and who supports QUT researchers in making their work publicly available online.<sup>199</sup> Additional staff can be appointed or library staff can be trained to assist the repository manager where required.

## 6.6 Ongoing considerations

Once your digital repository is set up and you have an open access policy in place, you may wish to consider imposing additional conditions to compel academics to deposit in the repository. For example, your institution may require that any articles

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<sup>197</sup> Markland and Brophy, SHERPA Project Evaluation Final Report.

<sup>198</sup> Peter Suber, *MIT's new Scholarly Publishing Consultant* (blog) (12 December 2006) Open Access News <[http://www.earlham.edu/~peters/fos/2006\\_12\\_10\\_fosblogarchive.html](http://www.earlham.edu/~peters/fos/2006_12_10_fosblogarchive.html)> at 14 December 2006.

<sup>199</sup> See <[http://www.library.qut.edu.au/contacts/staff/p\\_callan.jsp](http://www.library.qut.edu.au/contacts/staff/p_callan.jsp)> at 14 March 2007.



to be considered in a promotion or tenure review must be deposited and available in the institution's digital repository.<sup>200</sup>

You may also like to offer some further services and benefits to authors who do self archive. These can include implementing a system to inform authors of how many times their article has been accessed and cited, and producing personal publication lists for individual academics.<sup>201</sup> "Each institution's [repository] is the natural place from which to derive and display research performance indicators: publication counts, citation counts, download counts, and many new metrics, rich and diverse ones, that will be mined from the OA corpus, making research evaluation much more open, sensitive to diversity, adapted to each discipline, predictive, and equitable."<sup>202</sup>

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<sup>200</sup> Peter Suber, *What you can do to promote open access* (2006)

<<http://www.earlham.edu/~peters/fos/do.htm>> at 18 December 2006 (hereinafter Suber, *What you can do to promote open access*).

<sup>201</sup> Gutteridge and Harnad, *Applications, Potential Problems and a Suggested Policy*; Pinfield, Gardner and MacColl, 'Setting up an institutional e-print archive'.

<sup>202</sup> Steve Hitchcock, *Why repository mandates, research assessment and metrics are connected* (blog) (3 January 2007) EPrints Insiders <<http://www.eprints.org/community/blog/index.php?archives/177-Why-repository-mandates,-research-assessment-and-metrics-are-connected.html>> at 4 January 2007.

## 7.0 Advocacy

The key to your repository's success will be whether your staff and students are aware of your repository, why it is there and how they can deposit material in it. It is, therefore, important that they have read your open access policy and know their rights and obligations, especially if you have adopted a mandatory policy.

You should not underestimate the importance of making authors aware of your digital repository and open access policy. When QUT first established its repository in 2004, only 10% of documents published in that year were deposited by the year's end, despite the mandatory deposit policy.<sup>203</sup> In response to this low acquisition rate, QUT commenced a publicity campaign in 2005, to great success. In that year, the number of deposits rose to close to 50% of the content produced by QUT.<sup>204</sup> Similarly, a survey undertaken of NIH funded authors found that most did not have a proper understanding of the NIH Public Access Policy (only 18% knew a lot about it), and this was a significant reason why archival in the repository was low.<sup>205</sup>

In order to promote awareness of your digital repository, it will be necessary to conduct advocacy campaigns. These may include faculty presentations about open access and the digital repository, individual meetings with academics, producing promotional material such as leaflets, setting up a project website, and publishing articles in in-house newsletters and magazines to inform staff of the progress the repository makes over time.<sup>206</sup>

An essential part of your advocacy will be addressing authors' concerns about the repository and the deposit process. The most common concerns can be broken down into three main categories:

- Concerns about the repository itself – how will it look? Is it an alternative to conventional publishing models? Does deposit into a repository mean the author relinquishes control over their work?
- Concerns about their rights – many authors will be unsure about their rights under copyright law, and whether or not they are allowed to deposit work into a digital repository.
- Concerns about the deposit process, especially the time and effort required to deposit, enter metadata, and gain permissions from publishers.

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<sup>203</sup> Sale, 'The acquisition of open access research articles'.

<sup>204</sup> Ibid.

<sup>205</sup> Hutchings, *Open Access now Openly Accepted*.

<sup>206</sup> Markland and Brophy, SHERPA Project Evaluation Final Report; Pinfield, Gardner and MacColl, 'Setting up an institutional e-print archive'; Crow, Institutional Repository Checklist.

### *Concerns about the repository*

A study undertaken in England indicated that academics are generally concerned about how their individual texts will appear in the repository and also about how the repository material is organised as a whole.<sup>207</sup> They want their work displayed at a high standard and formatted correctly.<sup>208</sup> They also want content to be organised so that the repository is browsable in as many different ways as possible (e.g. so users can browse by subject, department, author or year).<sup>209</sup> These concerns can be addressed by first establishing a well-structured repository, and then demonstrating this repository to academics. Demonstrations can be conducted through large faculty presentations or on a one-on-one basis with individual authors. Alternatively, it may be possible to set up an online demonstration on a project website that is linked to the repository.

Some authors think that self-archiving in a digital repository is the same as self-publishing.<sup>210</sup> Self publishing can be defined as “the publishing of books and other media by the authors of those works, rather than by established, third party publishers.”<sup>211</sup> Authors may be concerned that deposit constitutes a “prior publication”, which may prevent their work from being published by a print journal (as most print journals will only publish work that has not been published previously).<sup>212</sup> This is a legitimate concern as some publishers will be very strict about the release of pre-published material. However, publishers will usually be more concerned about material that has been published in print before, rather than deposited in a digital repository. It will also be possible, in most cases, to remove material from a repository if the publisher requires.

Where material has already been published in print, it is important to explain to authors that material can be both published traditionally *and* deposited in a digital repository, provided all the necessary permissions are obtained. It is not an either/or situation. As advised by the Scholarly Publishing and Academic Resources Coalition (SPARC), “[to] help maintain the distinction between the repository as an informal communication channel and peer-reviewed journals as a formal channel – for the benefit of both faculty and publishers – it would be best to avoid terms such as “submit” and “publish” in referring to faculty contributions, using instead “participate,” “deposit,” “contribute,” or “post”.”<sup>213</sup>

Academics who are unfamiliar with open access may fear that making their work freely available means that they will lose control over it. “They worry irrationally that somehow their work will be easier to plagiarise from a repository...”<sup>214</sup> Academics should be assured that open access does not mean that they are forfeiting their rights

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<sup>207</sup> Markland, and Brophy, SHERPA Project Evaluation Final Report at 41.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid, 42.

<sup>210</sup> Pinfield, Gardner and MacColl, ‘Setting up an institutional e-print archive’; Crow, Institutional Repository Checklist.

<sup>211</sup> See <[http://en.wikipedia.org/wiki/Self\\_publishing](http://en.wikipedia.org/wiki/Self_publishing)> at 26 March 2007.

<sup>212</sup> Pinfield, Gardner and MacColl, ‘Setting up an institutional e-print archive’; Crow, Institutional Repository Checklist.

<sup>213</sup> Crow, Institutional Repository Checklist at 14.

<sup>214</sup> Markland and Brophy, SHERPA Project Evaluation Final Report.

or that their work is more at risk. The author's right to be acknowledged as the author and other associated rights are still enforceable at law, and indeed are protected through the mechanisms of the Repository Deposit Licence, the Repository Distribution (End User) Agreement and, where applicable, the Author Distribution Agreement.<sup>215</sup>

### *Concerns about copyright*

Despite the fact that potential depositors may have been published many times before and have signed many publishing agreements, they may still be unsure about their rights to deal with their work after signing a publishing agreement. Some authors are unaware that a full assignment of copyright to a publisher means that from that point onwards even they cannot reproduce and use their own work without the publisher's permission. The situation is further complicated by the fact that publishing agreements and publisher's policies are often unclear about whether or not the author has the right to self-archive their work after publication.

Generally, authors will be concerned about:

- how to determine whether they have the right to self-archive their work;
- how to seek permission from the publisher to self-archive their work, and whether this will detrimentally affect their relationship with their publisher; and
- whether deposit of their work in the digital repository transfers copyright to the repository.

Your open access policy and Repository Deposit Licence should make clear to the author that depositing material into the repository does not transfer copyright in the material and that the author/copyright owner retains the right to make their material available elsewhere.

Authors will need to read their publishing agreements carefully to determine whether their publisher allows self-archiving. Additionally, authors should check their publisher's policy about open access, which can sometimes be found on the publisher's website. The SHERPA List and the forthcoming OAK List, available online, provide a comprehensive directory of journal publisher's copyright and self-archiving policies.<sup>216</sup> If the publishing agreement and publisher's website are silent on this issue, authors should be encouraged to contact their publisher and seek permission to self-archive their work. Authors should explain to publishers where they will be placing their work, and why they want to self-archive their work. Most publishers will grant permission to the author to self archive, once it is explained that:

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<sup>215</sup> See 4.2 and 5.2.

<sup>216</sup> See <<http://www.sherpa.ac.uk/romeo.php>> at 26 March 2007.

- the author is seeking permission to place a copy of their work in their institution's repository, not to publish the same work in another journal or with another publisher;<sup>217</sup> and
- citation of the published version of the material will be included and clearly visible in the repository, increasing the publisher's exposure to academic audiences.

Practically, authors may consider it too onerous to perform these checks themselves. They may decline to deposit their work into the repository if they feel that the process will be too difficult or time-consuming. Therefore, you should consider whether someone at your institution will be available either to check publisher's agreements and policies on behalf of authors or assist authors in checking their publisher's agreements and policies.

Where possible, you should also encourage authors to issue licences rather than assignments to publishers, or to attach an author addendum to their publishing agreement to retain the right to self-archive.<sup>218</sup>

The repository manager and a copyright officer at your institution should be available to explain these legal issues to authors, and to offer advice as to how the author may retain their rights when dealing with publishers.

### *Concerns about the deposit process*

Academics and researchers are busy people, and as such are usually reluctant to engage in activities that they perceive will unnecessarily increase their workload. In relation to repositories, authors are concerned about the time and effort required to:

- deposit an article;
- enter the metadata necessary to describe the deposited article; and
- where necessary, to obtain permission to deposit from their publisher.

Again, a university officer should be able to assist authors in determining whether or not their publisher will permit them to deposit their work. Once permission is obtained to deposit one article, it should be much easier for the author to convince the publisher to allow them to deposit any future articles.

The deposit process itself is relatively quick and easy, and authors can be shown this in presentations. On average, it only takes an author 6 - 10 minutes to deposit their first article, and only a few minutes once they are familiar with the process.<sup>219</sup>

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<sup>217</sup> Kerin Friedman, Alex Golub, Kambiz Kamrani and Christopher Kelty, *Author's rights agreements: how to make them work for you* (2006) Open Access Anthropology <<http://blog.openaccessanthropology.org/2006/12/02/authors-right-agreements-how-to-make-them-work-for-you/>> at 4 December 2006; see also: Markland, and Brophy, SHERPA Project Evaluation Final Report.

<sup>218</sup> See 4.2.1 Power to enter into a Repository Deposit Licence.

<sup>219</sup> Suber, *What you can do to promote open access*.

The deposit process will only feel like a lot of effort as long as authors accord open access low priority. However, if they feel that open access deposits are worthwhile, the deposit process will not seem as onerous. The benefits of open access repositories should therefore be emphasised to authors, in particular:

- open access means that work can be disseminated far more rapidly and effectively than what traditional publishing makes possible;
- interoperable repositories mean that repository content will be searchable in many different search engines, thereby increasing the visibility of deposited content; and
- increased visibility raises the profiles of both the author and the institution.<sup>220</sup>

Developing “value added services”, such as presenting authors with details about the number of times their article has been accessed and cited, will also fuel enthusiasm about the repository.<sup>221</sup> Moreover, it may also be helpful to switch the academic’s focus from academic-as-author to academic-as-researcher, by reminding the academic that they too will be able to use the repository to gain access to other people’s work that they may find useful in their own research.<sup>222</sup>

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<sup>220</sup> Markland and Brophy, SHERPA Project Evaluation Final Report.

<sup>221</sup> Pinfield, Gardner and MacColl, ‘Setting up an institutional e-print archive’.

<sup>222</sup> Markland and Brophy, SHERPA Project Evaluation Final Report.

## 8.0 Conclusion

This guide was designed to help you to establish digital repository infrastructure in your institution and to establish a lawful and effective management model for your repository that is in line with open access principles.

Your institution should formulate a general open access policy to apply across the entire institution, particularly where research and academic output is concerned. Guidance is provided by the international policies and principles and the sample open access principles described in this guide. An open access policy will assist you in developing your repository and ensuring that access to your repository is not unduly restrictive.

It is important to have both legal and management frameworks in place from the creation of your digital repository. This will prevent problems arising later that could have easily been avoided.

**Management frameworks** involve defining the limits of your repository regarding –

- (1) depositors – who can and cannot deposit and what authority the repository has to compel deposit;
- (2) material – what should and should not be included in the repository, the appropriate format of material, and whether material should be peer reviewed;
- (3) access rights – who can have access to the repository and what they can do with the material they have accessed; and
- (4) metadata – what metadata fields are necessary to ensure that material is searchable and that a record is retained of the material in the event that it must be removed from the repository for copyright or other reasons. There should also be in place a system for checking the accuracy of metadata entered by depositors.

It is essential for the repository to be properly managed. Material must be organised in a way that is logical and easily searchable and accessible. You should check that material has been uploaded to the repository correctly and that any unauthorised material is removed from the repository. Authors may need assistance with converting their files to the relevant format (such as PDF) and with depositing their material into the repository.

Once repository infrastructure including software and management frameworks is in place, it will be necessary to ensure the ongoing maintenance of that infrastructure. You will also need to make academics, staff and students aware of the repository. Advocacy should promote the repository and should address academics' concerns about the time and effort involved in depositing their work, the copyright implications of depositing published material and how the repository is organised and managed by your institution.

**Legal frameworks** are vital in ensuring that depositors have the legal rights necessary to deposit material into the repository. It is important to have a comprehensive Repository Deposit Licence to obtain the necessary warranties from depositors so that you can confidently deal with the material in the repository. A Repository Deposit

Licence will also make depositors aware of their rights and responsibilities in relation to the repository.

It is prudent to establish protocols for checking that the depositor actually has the right to deposit the work into the repository. The depositor must be the copyright owner or have permission from the copyright owner in order to deposit the work legally. Often, the copyright owner will be the publisher of the material. In these situations, you may want to check the publishing agreement to ascertain whether copyright has in fact been assigned to the publisher, and if so, whether the publisher allows self-archiving of the material. Some publishers have general policies about digital repositories that are reflected in their publishing agreements or on their website. The SHERPA List and the forthcoming OAK List provide a directory of publishers' policies about digital repositories.<sup>223</sup>

As part of the legal framework you will also need to consider the access rights that are granted to end-users. You may require end-users to enter into a Repository Distribution (End User) Agreement to ensure that they only deal with material in the repository in a manner that is consistent with rights granted by depositors in the Repository Deposit Licence. You may also wish to provide facilities to authors to place Creative Commons licences, or other end-user licences, on their work (with permission from the copyright owner where necessary).

**Australian Government Productivity Commission Research Report: Public Support for Science and Innovation (9 March 2007):**

Innovation is critical to Australia's growth and its preparedness for emerging economic, social and environmental challenges....<sup>224</sup>

...Research infrastructure is an important input to science and innovation...DEST noted that, as well as providing the 'critical capability for the production of world class research', research infrastructure is 'essential' to the operation of the innovation system as a whole. In particular, it drew attention to how research infrastructure makes research more productive, assists in attracting talent and facilitating the development of human capital networks and skills, and integrates Australia into the international research system. Research infrastructure embraces such items as research facilities and equipment (and the services that support them); libraries and ICT networks for storing, moving and accessing research information; and collections, archives, large/complex data sets and records.<sup>225</sup>

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<sup>223</sup> See <<http://www.sherpa.ac.uk/romeo.php>>.

<sup>224</sup> Productivity Commission 2007, *Public Support for Science and Innovation*, Research Report, Productivity Commission, Canberra, Overview xvii.

<sup>225</sup> Productivity Commission 2007, *Public Support for Science and Innovation*, Research Report, Productivity Commission, Canberra, 205 – 206.



## **Final checklist for developing open access through your digital repository**

Have you:

- ☐ Developed a general Open Access Policy for your institution?
- ☐ Chosen a software package to create and maintain your repository?
- ☐ Decided how your repository will be structured (is it institutional, faculty-based, subject-based or other)?
- ☐ Decided who can deposit in your repository?
- ☐ Decided what material will be included in your repository?
- ☐ Decided whether your deposit policy will be mandatory or voluntary (and to what extent)?
- ☐ Decided what format material must be in, whether it must be full text, and whether you will accept pre-prints?
- ☐ Chosen your metadata fields?
- ☐ Decided what other conditions you want to apply to your repository (for example, that material intended for commercialisation or containing confidential information should not be deposited)?
- ☐ Decided how the content in your repository will be organised?
- ☐ Developed a Repository Deposit Licence that:
  - ☐ ensures that depositors own copyright in the material they are depositing or have permission from the copyright owner to deposit; and
  - ☐ grants to the repository the necessary rights to make the material available to end-users?

- ☐ Decided who may have access to your repository and the scope of their rights?
- ☐ Decided whether you want to provide a facility to enable authors to enter into an Author Distribution Agreement with end-users, for example by attaching a Creative Commons licence to their work?
- ☐ Required end-users to agree (through a click-wrap agreement) to the terms of the Author Distribution Agreement or the Repository Distribution (End-User) Agreement?
- ☐ Appointed staff to help manage the repository and determined the ambit of their responsibilities?
- ☐ Effectively managed the costs associated with creating and maintaining a digital repository?
- ☐ Informed staff and students about your repository and open access policy?
- ☐ Adequately addressed the concerns of authors about the repository, the deposit process and copyright in their material?

## **Glossary**

**Author addendum** – A document that can be attached by an author to a publishing agreement to alter their rights under the contract (usually to allow self-archiving).

**Author Distribution Agreement** – a licence granted by an author to end-users to use the author's work subject to any conditions imposed by the author. A common form of an Author Distribution Agreement is a Creative Commons Licence.

**Browse-wrap website agreement** – Where a user of the web site is required to view the terms and conditions of the relevant agreement, but is not required to click on a button to indicate assent to the agreement before proceeding.

**Click-wrap website agreement** – A website that requires the user to read the relevant agreement and click an 'I accept' or 'I agree' button before they are able to proceed.

**Conference Paper** – A paper which is presented at a conference or meeting of practitioners in a given profession.<sup>226</sup>

**Copyright** - A collection of legal rights that attach to an original work when it is created. Copyright allows the copyright owner to control certain acts to do with their work (e.g. copying) and to prevent others from using the protected material without permission.

**Creative Commons Licence** – A standard-form licence that gives end-users rights in relation to a work, subject to certain conditions as selected by the author. The rights given are to copy, distribute, display and perform the work. The conditions that may be imposed are: attributing the work to the author (this condition is present in all Creative Commons licences); non-commercial use only; non-derivative works only; or derivative works can be made but only if they are licensed under an identical Creative Commons Licence.<sup>227</sup>

**Digital repository** – An online archive where authors can deposit their work to make the work freely available in digital form.

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<sup>226</sup> See <[http://www.usg.edu/galileo/skills/ollic\\_glossary.html](http://www.usg.edu/galileo/skills/ollic_glossary.html)> at 26 March 2007.

<sup>227</sup> See <<http://creativecommons.org.au/licences>> at 12 January 2007.

**DSpace** – The name of the repository (and the corresponding software) used at the Massachusetts Institute of Technology (MIT).<sup>228</sup>

**E-prints or EPrints** – E-prints are electronic copies of academic papers. EPrints is the name given to one type of digital repository, and the software that runs it.

**Embargo period** - A period of time imposed by a publisher, during which the publisher restrains the author from making the published work available in an open access repository, but after which an author may self-archive.

**End user** – The person accessing the material in the digital repository.

**Metadata** – The information that describes the material deposited in a repository. It includes the name of the article, the name of the author, the date of publication, and other relevant details.

**OAI-compliant** – A repository that is OAI-compliant is interoperable with multiple search engines and discovery tools, making it easier for end-users to search and locate material in the repository.

**Open access (OA)** – Open access aims to disseminate knowledge and materials broadly and freely across the internet, and in doing so remove most of the traditional access restrictions to these materials, such as cost and geographical barriers.

**Post-print** – The final version of an academic paper, incorporating the revisions made as a result of the peer review process or as accepted for publication if no changes were made.<sup>229</sup>

**Pre-print** – The version of an academic paper which is submitted by an author for peer review.<sup>230</sup>

**Refereed** – This is also known as peer review. A refereed article is one in which the author's work and ideas have been subject to the scrutiny of others who are experts in the field.<sup>231</sup>

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<sup>228</sup> See <<https://dspace.mit.edu/>> at 12 January 2007.

<sup>229</sup> <<http://eprints.qut.edu.au/faq.html>> at 12 January 2007.

<sup>230</sup> Ibid.

<sup>231</sup> <<http://encyclopedia.thefreedictionary.com/peer+review>> at 12 January 2007.

**Repository Deposit Licence** – An agreement between the repository and the depositor that defines the rights and obligations of both parties with regards to the deposited material.

**Repository Distribution (End User) Agreement** – An agreement between the repository and end-users that grants rights to end-users to access and re-use material in the repository. The rights granted must be consistent with those allowed in the Repository Deposit Licence between the depositor and the repository.

**Self-archive** – The process of depositing one's own material in an online repository

**Unrefereed** – A work that has not been subjected to peer review, commonly referred to as a pre-print.



## **Abbreviations**

**AATE** – Australian Association for the Teaching of English

**ADT** – Australian Digital Thesis

**ALEA** – Australian Literacy Educator’s Association

**ANU** – Australian National University

**APSR** – Australian Partnership for Sustainable Repositories

**ARC** – Australian Research Council

**ARROW** – Australian Research Repositories Online to the World

**AustLII** – Australasian Legal Information Institute

**BOAI** – Budapest Open Access Initiative

**EC** – European Commission

**DART** – Dataset Acquisition, Accessibility and Annotation e-Research Technology

**DCMI** – Dublin Core Metadata Initiative

**DEST** – Department of Education, Science and Training

**ISBN** – International Standard Book Number

**ICE-RS** – Integrated Content Environment for Research and Scholarship

**JASON** – Joint Academic Scholarships On-line Network

**JISC** – Joint Information Systems Committee

**MAMS** – Meta Access Management System

**MAPS** – Middleware Action Plan and Strategy

**MIT** – Massachusetts Institute of Technology

**MMIM** – Molecular Medicine Informatics Model

**NHMRC** – National Health and Medical Research Council

**NIH** – National Institutes of Health

**OA** – Open Access

**OAI** – Open Archives Initiative

**OAK** – Open Access to Knowledge

**QUT** – Queensland University Technology

**PLoS** – Public Library of Science

**RUBRIC** – Regional Universities Building Research Infrastructure Collaboratively

**SHERPA** – Securing a Hybrid Environment for Research Preservation and Access

**SII** – Systematic Infrastructure Initiative

**SPARC** – Scholarly Publishing and Academic Resources Coalition

**UK** – United Kingdom

**USA** – United States of America

**UQ** – University of Queensland

**USQ** – University of Southern Queensland



## **Appendix One**

**[THIS LIST WAS COMPILED IN MARCH 2007. SOME UNIVERSITIES MAY HAVE UPDATED THEIR REPOSITORY POLICIES SINCE THIS DATE. FOR MORE UP-TO-DATE INFORMATION, PLEASE CONSULT EACH INSTITUTION'S WEBSITE.]**

	<b>Australian National University</b>
<b>URL</b>	<a href="http://eprints.anu.edu.au/information.html">http://eprints.anu.edu.au/information.html</a>
<b>Who may deposit?</b>	ANU staff, students and affiliates
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Papers submitted for journal publication</li> <li>• Papers posted electronically for peer consideration and comment before submission for publication</li> <li>• Books and book chapters</li> <li>• Working papers</li> <li>• Conference papers</li> <li>• Theses</li> <li>• Departmental technical reports</li> </ul>
<b>What material cannot be deposited?</b>	
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	Material deposited must be a complete paper with all sections present
<b>Copyright terms</b>	

	<b>Bond University</b>
<b>URL</b>	<a href="http://epublications.bond.edu.au">http://epublications.bond.edu.au</a>
<b>Who may deposit?</b>	Faculty, researchers and students associated with Bond University
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Journal articles</li> <li>• Research and academic papers</li> <li>• Working papers</li> <li>• Theses</li> </ul>

	<ul style="list-style-type: none"> <li>• “Associated Files” including sound clips, data sets, images, charts and tables</li> </ul>
<b>What material cannot be deposited?</b>	
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	
<b>Copyright terms</b>	The Bond ePublications website advises depositors to check their author agreement with their publisher before depositing material in the website. It also confirms that the repository would constitute non-commercial use.

	<b>Central Queensland University</b>
<b>URL</b>	<a href="http://policy.cqu.edu.au/Policy/policy.jsp?policyid=679">http://policy.cqu.edu.au/Policy/policy.jsp?policyid=679</a>
<b>Who may deposit?</b>	CQU staff and post-graduate students. Also, researchers external to the University, if they are co-authoring with CQU authors or are affiliated with the University.
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Refereed research articles and contributions at the post-print stage of publication.</li> <li>• Theses as prepared for the ADT program (<a href="http://adt.caul.edu.au/">http://adt.caul.edu.au/</a>)</li> <li>• CQU projects and theses resulting from non-research awards, including professional doctorates, final year engineering projects, honours theses and research reports forming a substantial part of an undergraduate degree, where submission is agreed by the Dean of the Faculty</li> <li>• Non-refereed research literature such as conference contributions, chapters in proceedings and book chapters</li> <li>• University related research material such as books, working papers, discussion papers, government submissions, reports and inaugural lectures</li> <li>• Ancillary research material such as data sets, statistics and surveys</li> </ul>
<b>What material cannot be deposited?</b>	<ul style="list-style-type: none"> <li>• Administrative reports, such as the University annual report, meeting minutes, committee papers and/ or similar material which is collected in the official administrative archives.</li> <li>• Output intended for commercialisation or individual royalty payment or revenue for the author or CQU.</li> </ul>
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	Access to material will be suppressed in the following circumstances:

	<ul style="list-style-type: none"> <li>• if the journal in which a paper is formally published requires it</li> <li>• if the paper proves scurrilous, plagiarizes, is libellous or breaches copyright</li> <li>• if the author requests removal and the Director, DLS approves its removal</li> </ul>
<b>Copyright terms</b>	The University may chose to restrict access to works, whether in part or in full, if copyright permission is in doubt or unavailable.

	<b>Curtin University</b>
<b>URL</b>	<a href="http://library.curtin.edu.au/espaces/faqabridged.html">http://library.curtin.edu.au/espaces/faqabridged.html</a>
<b>Who may deposit?</b>	<p>Authorised staff and students:</p> <ul style="list-style-type: none"> <li>• Research papers will have been produced as a member of Curtin Uni</li> <li>• Research output by visiting or adjunct academic staff is accepted, provided the research is related to the visiting academic status and reflects Curtin's involvement</li> <li>• Postgraduate students</li> </ul> <p>Undergraduate students if the student is working with academic staff on specific research and publications</p>
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Journal articles, book chapters, conference papers, newspaper or magazine articles, working papers, or departmental technical reports, if: <ul style="list-style-type: none"> <li>- refereed/peer reviewed and published; or</li> <li>- refereed/peer reviewed and in-press (post print); or</li> <li>- produced by a Uni research centre and approved by authorised person; or</li> <li>- defined under Section C: Research Outputs Material within the research performance index and awarded RPI points</li> </ul> </li> <li>• Datasets</li> <li>• Computer programs if written permission is obtained from the uni, or from the copyright owner if it was developed as an employee of a different institution</li> </ul>
<b>What material cannot be deposited?</b>	
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary

<b>Conditions imposed</b>	<ul style="list-style-type: none"> <li>• University requests, where possible, the personal version/draft of the author's post print, as this is the version that most publishers request is placed in the repository</li> <li>• Authors can post material in repository and on own website, and can use the espace@Curtin URL link elsewhere</li> </ul>
<b>Copyright terms</b>	<ul style="list-style-type: none"> <li>• Must own copyright or have permission from copyright owner</li> <li>• Under the Uni IP Policy: <ul style="list-style-type: none"> <li>- The university owns copyright in all computer works, course material and other material created by staff in the course of their duties, and in all work commissioned by the university</li> <li>- Staff owns copyright for all work created outside the course of their duties</li> <li>- Students generally own copyright in their work</li> <li>- The university claims no ownership in artistic works</li> </ul> </li> </ul>

	<b>Flinders University</b>
<b>URL</b>	<a href="http://www.lib.flinders.edu.au/~dspace/faq.html">http://www.lib.flinders.edu.au/~dspace/faq.html</a>
<b>Who may deposit?</b>	<p>Flinders University faculty and staff</p> <p>The archive is organised into communities (departments, research centres or other categories). Communities determine the personnel who can contribute.</p>
<b>What material can be deposited?</b>	<p>Communities define the kinds of material they want to include.</p> <p>“Examples of appropriate content include statistical datasets, working papers, technical reports, and other scholarship not usually submitted for peer-review publications, as well as previously published material if the publisher permits.”</p>
<b>What material cannot be deposited?</b>	
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	
<b>Copyright terms</b>	<p>Authors retain copyright in materials deposited to the repository.</p> <p>Depositors are required to click on a licence that signifies they own the copyright and have the right to deposit or have permission to deposit from the copyright owner. The licence grants to Flinders University a limited non-</p>

	exclusive licence to disseminate the material through the repository and to migrate the material (i.e. back it up or copy it) for preservation purposes.
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	<b>James Cook University</b>
<b>URL</b>	<a href="http://eprints.jcu.edu.au/researchpapers.html">http://eprints.jcu.edu.au/researchpapers.html</a>
<b>Who may deposit?</b>	JCU staff and students
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Journal articles</li> <li>• Conference papers, proceedings and posters</li> <li>• Books and book chapters</li> <li>• Theses</li> <li>• Working papers</li> <li>• Departmental technical records</li> <li>• Research reports and significant project reports</li> <li>• Preprints</li> <li>• Some multimedia items</li> </ul>
<b>What material cannot be deposited?</b>	<ul style="list-style-type: none"> <li>• Material intended for commercialisation</li> <li>• Papers containing confidential material</li> <li>• Papers which, if disseminated, would infringe a legal commitment by the University and/or the author</li> <li>• Administrative materials such as meeting minutes, committee papers, University annual reports etc</li> <li>• Teaching materials such as lecture notes, reading lists and multimedia resources</li> </ul>
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	
<b>Copyright terms</b>	<p>Depositing work in JCU ePrints has no effect on the ownership of copyright in the document.</p> <p>JCU offers some advice to authors on managing their copyright and retaining the right to self-archive when negotiating with publishers – see website for more details.</p>

	<b>Monash University</b>
<b>URL</b>	<a href="http://arrowprod.lib.monash.edu.au:8000/access/about.php">http://arrowprod.lib.monash.edu.au:8000/access/about.php</a>
<b>Who may deposit?</b>	Research: Monash Uni staff and students, or a creator with an affiliation with Monash, such as a visiting scholar  Academic Papers: academic staff and postgraduate students
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Journal articles</li> <li>• Books and book chapters</li> <li>• PHD Theses</li> <li>• Research papers, conference papers, working papers</li> <li>• Technical reports</li> <li>• Multimedia objects</li> </ul> <p>All publications must be scholarly or research orientated. Research publications must be associated with or sponsored by Monash.</p>
<b>What material cannot be deposited?</b>	<ul style="list-style-type: none"> <li>• Material intended for commercialisation</li> <li>• Publications containing confidential information</li> <li>• Publications which, if disseminated, would infringe a legal obligation of Monash or the author or the legal rights of a third party</li> </ul>
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	<ul style="list-style-type: none"> <li>• Monash Uni repository will not seek transfer of the copyright from the author</li> <li>• Author may also post their publication on their own website</li> </ul>
<b>Copyright terms</b>	Depositor should own copyright or seek permission from publisher to deposit

	<b>Queensland University of Technology</b>
<b>URL</b>	<a href="http://www.mopp.qut.edu.au/F/F_01_03.html">http://www.mopp.qut.edu.au/F/F_01_03.html</a>
<b>Who may deposit?</b>	QUT staff and post-graduate students
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Refereed research articles and contributions at post print stage</li> <li>• Refereed research literature at pre print stage</li> </ul>

	<ul style="list-style-type: none"> <li>• Theses</li> <li>• Unrefereed research literature, conference contributions and chapters in proceedings</li> </ul>
<b>What material cannot be deposited?</b>	<ul style="list-style-type: none"> <li>• Material to be commercialised or intended for individual royalty payment or revenue for the author or QUT</li> <li>• Material containing confidential information</li> <li>• Where the promulgation of the material would infringe a legal commitment of the author or QUT</li> </ul>
<b>Is it mandatory or voluntary to deposit?</b>	Mandatory
<b>Conditions imposed</b>	<ul style="list-style-type: none"> <li>• It must be the author's manuscript (preferably the final draft) that is deposited, not the publisher-formatted version (exception: IEEE requires authors to use the published version)</li> <li>• If the author has a home page, links should be provided to the article as submitted to the QUT E-Print repository</li> </ul>
<b>Copyright terms</b>	<ul style="list-style-type: none"> <li>• Access to the contributions will be subject to any necessary agreement with the publisher</li> <li>• Access to the full-text of deposited book portions are restricted unless the depositor indicates that they own the copyright or the publisher has given permission for the manuscript to be accessible</li> </ul>

	<b>Southern Cross University</b>
<b>URL</b>	<a href="http://epubs.scu.edu.au">http://epubs.scu.edu.au</a>
<b>Who may deposit?</b>	Faculty, researchers and students associated with Southern Cross University
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Journal articles</li> <li>• Research and academic papers</li> <li>• Working papers</li> <li>• Theses</li> <li>• "Associated Files" including sound clips, data sets, images, charts and tables</li> </ul>
<b>What material cannot be deposited?</b>	
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	
<b>Copyright terms</b>	The website advises depositors to check their author agreement with their publisher before depositing material in the

	website. It also confirms that the repository would constitute non-commercial use.
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	<b>Swinburne University of Technology</b>
<b>URL</b>	<a href="http://researchbank.swinburne.edu.au/access/about.php?">http://researchbank.swinburne.edu.au/access/about.php?</a>
<b>Who may deposit?</b>	Creators with an affiliation with Swinburne – Swinburne staff and students, and visiting scholars
<b>What material can be deposited?</b>	<p>Research publications, objects or collections must be associated to, or sponsored by Swinburne University and must be scholarly or research orientated.</p> <ul style="list-style-type: none"> <li>• Journal articles</li> <li>• Research papers/reports</li> <li>• Discussion papers</li> <li>• Working papers</li> <li>• Technical reports</li> <li>• Conference papers</li> <li>• Books and book chapters</li> <li>• Theses</li> </ul>
<b>What material cannot be deposited?</b>	<ul style="list-style-type: none"> <li>• Material intended for commercialisation</li> <li>• Research publications or collections which contain confidential material</li> <li>• Research publications or collections which, if disseminated by Swinburne Research Bank will infringe a legal obligation of Swinburne University and/or the author/s or the legal rights of a third party</li> </ul>
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	
<b>Copyright terms</b>	<p>Papers can only be deposited where the author retains copyright or has permission from the publisher to deposit. Swinburne Research Bank staff will assist authors in contacting publishers about their institutional research archive policy.</p> <p>The repository does not have a self-deposit form yet.</p>



	<b>University of Melbourne</b>
<b>URL</b>	<a href="http://www.lib.unimelb.edu.au/eprints/collectionpolicy.htm">http://www.lib.unimelb.edu.au/eprints/collectionpolicy.htm</a>
<b>Who may deposit?</b>	Academic staff, postgraduate students and general staff where appropriate. “Outsiders” may contribute if they are co-authoring with Uni of Melbourne authors or are affiliated closely with the uni (e.g. hold honorary appointments)
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Pre-prints</li> <li>• Working papers</li> <li>• Published articles</li> <li>• Books and book chapters</li> <li>• Online journals</li> <li>• Research reports</li> <li>• Conference papers</li> <li>• Data sets</li> <li>• Theses</li> </ul> <p>The collection is restricted to deposits of full text electronic research output</p>
<b>What material cannot be deposited?</b>	
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	
<b>Copyright terms</b>	<p>Contributors are required to sign a form where they warrant that:</p> <ul style="list-style-type: none"> <li>• they are the copyright owners or have permission from the copyright owners</li> <li>• the e-prints are original works</li> <li>• the university’s use of the e-prints will not infringe the IP rights of a third party</li> <li>• the university is not liable for any breach of the creator’s IP rights as a result of use of the e-prints</li> </ul>

	<b>University of New South Wales</b>
<b>URL</b>	<a href="http://arrow.unsw.edu.au/policy.html">http://arrow.unsw.edu.au/policy.html</a>
<b>Who may deposit?</b>	UNSW staff and students. Creators with an affiliation with UNSW, such as a visiting scholar to UNSW

<b>What material can be deposited?</b>	<p>The research publication, object or collection must be associated to or sponsored by UNSW, and must be scholarly or research orientated.</p> <ul style="list-style-type: none"> <li>• Journal articles</li> <li>• Research papers/reports</li> <li>• Working papers</li> <li>• Technical reports</li> <li>• Conference papers</li> <li>• Books and book chapters</li> <li>• Theses (honours only as postgraduate theses are captured through ADT)</li> <li>• Small-sized datasets accompanying papers/articles/reports</li> <li>• Images used for research</li> <li>• Multimedia objects</li> <li>• Rich media</li> </ul>
<b>What material cannot be deposited?</b>	<ul style="list-style-type: none"> <li>• Material intended for commercialisation</li> <li>• Research publications of collections which contain confidential material</li> <li>• Research publications or collections which, if disseminated by ARROW@UNSW, would infringe a legal obligation of UNSW and/or the author/s or the legal rights of a third party</li> </ul>
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	
<b>Copyright terms</b>	<p>Copyright of any material deposited in ARROW@UNSW is retained by the creator.</p> <p>For published material, UNSW provides a sample letter to send to publishers to request permission to self-archive</p>

	<b>University of Queensland</b>
<b>URL</b>	<a href="http://www.library.uq.edu.au/database/efaq.html">http://www.library.uq.edu.au/database/efaq.html</a>
<b>Who may deposit?</b>	UQ staff and postgraduate students (both past and present)
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• UQ accepts both pre-print and post print publications</li> <li>• Conference papers and proceedings</li> <li>• Newspaper or journal articles</li> </ul>

	<ul style="list-style-type: none"> <li>• Books and book chapters</li> <li>• Online journals</li> <li>• Working papers</li> <li>• Departmental technical reports</li> <li>• Data sets</li> <li>• Some theses</li> </ul>
<b>What material cannot be deposited?</b>	
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	
<b>Copyright terms</b>	<ul style="list-style-type: none"> <li>• The author holds the copyright for the pre-refereed pre-print, so that can be self-archived without seeking anyone's permission</li> <li>• Permission may be required for a refereed post-print. UQ provides a sample permissions letter that can be presented to publishers.</li> <li>• UQ also advises that authors attempt to modify future contracts by including the clause "I retain the right to distribute my paper for free for scholarly/scientific purposes, in particular, the right to self-archive it publicly online in a Web-based institutional repository such as ePrintsUQ"</li> <li>• If permission is not obtained, authors can deposit a corrigenda file to accompany an already archived pre-print</li> </ul>

	<b>University of Southern Queensland</b>
<b>URL</b>	<a href="http://www.usq.edu.au/eprints/policies/collpol/eprints.htm">http://www.usq.edu.au/eprints/policies/collpol/eprints.htm</a>
<b>Who may deposit?</b>	USQ researchers, scholars and other staff
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Journal article in a journal, magazine or newspaper articles</li> <li>• Books or book chapters</li> <li>• Technical reports and project reports</li> <li>• Working papers and discussion papers</li> <li>• Conference papers</li> <li>• Unpublished manuscript of literary work, and art work if accompanied by text material</li> <li>• Inaugural lectures and Professorial lectures</li> <li>• "Enduring" teaching material of a substantial nature</li> </ul>

	<ul style="list-style-type: none"> <li>• Patent, published</li> <li>• Data sets</li> <li>• Dissertations forming part of a coursework Masters or coursework Doctorate degree</li> <li>• Research reports forming a substantial part of an undergraduate degree, where submission is agreed by the Dean of the Faculty</li> <li>• Fourth-year Engineering student projects</li> <li>• Drafts of works, when there is substantial content in the draft that is not contained in the final version</li> </ul>
<b>What material cannot be deposited?</b>	<ul style="list-style-type: none"> <li>• Administrative reports</li> <li>• Research degree dissertations</li> <li>• Teaching materials</li> <li>• Material that is confidential, required for subsequent publication, or restricted due to cultural sensitivity</li> <li>• Newspaper articles</li> <li>• Unpublished patent applications</li> </ul>
<b>Is it mandatory or voluntary to deposit?</b>	<p>It is mandatory to deposit the “details” (metadata/abstract) of all research books, chapters in research books, refereed journal articles and refereed conference presentations must be submitted, even when the full text of the material is not being deposited.</p> <p>It is voluntary to deposit all other material</p>
<b>Conditions imposed</b>	All material must have a relationship with USQ
<b>Copyright terms</b>	For an article to be deposited in full, the author must hold copyright, or permission must be obtained from the publisher, or the publisher as copyright holder must allow ePrints to be held in an institutional repository

	<b>University of Sydney</b>
<b>URL</b>	<a href="http://setis.library.usyd.edu.au/ses/roles.html">http://setis.library.usyd.edu.au/ses/roles.html</a> and <a href="http://setis.library.usyd.edu.au/ses/faq.html">http://setis.library.usyd.edu.au/ses/faq.html</a>
<b>Who may deposit?</b>	Authors of work produced or sponsored by a University of Sydney faculty, department, school or research centre
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Articles</li> <li>• Technical reports</li> <li>• Working papers</li> </ul>

	<ul style="list-style-type: none"> <li>• Conference papers</li> <li>• Theses</li> <li>• Audio/Video</li> <li>• Datasets</li> <li>• Images</li> </ul> <p>The policy provides, “Material deposited should primarily consist of academic and postgraduate research material, with the exception of honours theses or exceptions made by the department.”</p>
<b>What material cannot be deposited?</b>	<p>The copy of the work submitted must be a pre-print or a post-print – it cannot be the actual published version of the work</p> <p>Material deposited should not include any administrative records</p>
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	<ul style="list-style-type: none"> <li>• The work must be scholarly or research oriented</li> <li>• The work must be the finished version</li> <li>• If the work is part of a larger series or set of related works, these other works should also be contributed so that as full a set as possible is offered</li> </ul>
<b>Copyright terms</b>	<p>Copyright in material deposited in the repository is retained by the depositor/creator.</p> <p>Depositors are advised to check with their publishers as to whether copyright has been transferred and if so, whether self-archiving is permitted. They are also encouraged to attach an Author’s Addendum to future publishing agreements to allow self-archiving.</p> <p>Depositors can elect to restrict access to their material at different levels. However, the general public is always given access to the metadata</p> <p>End-users are advised, “Unless otherwise stated, you should treat the work like any other copyrighted material, and may make “fair use” of it as allowed under law.”</p>

	<b>University of Tasmania</b>
<b>URL</b>	<a href="http://www.eprints.org/openaccess/policysignup/fullinfo.php?inst=University%20of%20Tasmania">http://www.eprints.org/openaccess/policysignup/fullinfo.php?inst=University%20of%20Tasmania</a> and <a href="http://www.utas.edu.au/copyright/eprints/faq.html">http://www.utas.edu.au/copyright/eprints/faq.html</a>
<b>Who may deposit?</b>	All current University staff and graduate research candidates. University Honours students and graduates can submit first-class honours theses.
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Journal articles</li> <li>• Conference papers and proceedings</li> <li>• Books and book chapters</li> <li>• Technical reports</li> <li>• PhD, Masters and First-class Honours theses undertaken at the University of Tasmania</li> <li>• Other item types may be accepted at the discretion of ePrints staff</li> </ul> <p>Preference is given to peer-reviewed post-print items</p>
<b>What material cannot be deposited?</b>	
<b>Is it mandatory or voluntary to deposit?</b>	There was initially a mandatory deposit policy in the School of Computing only. The University has now mandated that all PhD and research Master theses must be deposited in the repository at the time of degree completion. At the moment, most deposits are voluntary, but the University has employed a patchwork mandate whereby each School/Department may individually mandate for deposit of material in the repository, in the hope that eventually there will be an institutional mandate throughout the entire University
<b>Conditions imposed</b>	
<b>Copyright terms</b>	Depositors must hold copyright in the material they are submitting or have permission from the copyright owner to submit. By putting materials in ePrints, depositors are giving the University a right to copy, store and communicate the material.

	<b>University of Technology Sydney</b>
<b>URL</b>	<a href="http://epress.lib.uts.edu.au/dspace">http://epress.lib.uts.edu.au/dspace</a>
<b>Who may deposit?</b>	Staff of UTS, and some research and postgraduate students, where it is appropriate that their material be included in the repository.
<b>What material can be deposited?</b>	<ul style="list-style-type: none"> <li>• Articles and preprints</li> <li>• Technical reports</li> <li>• Working papers</li> </ul>

	<ul style="list-style-type: none"> <li>• Conference papers</li> <li>• E-theses</li> <li>• Datasets</li> <li>• Images</li> <li>• Audio files</li> <li>• Video files</li> <li>• Learning objects</li> <li>• Reformatted digital library collections</li> </ul>
<b>What material cannot be deposited?</b>	
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	
<b>Copyright terms</b>	<p>A depositor must have the copyright to the material to have permission to submit the material.</p> <p>The depositor should be willing and able to grant the university library the right to preserve and distribute the work in DSpace.</p>

	<b>University of Wollongong</b>
<b>URL</b>	<a href="http://ro.uow.edu.au/about.html">http://ro.uow.edu.au/about.html</a>
<b>Who may deposit?</b>	<p>University of Wollongong staff and postgraduate students</p> <p>Papers can be deposited by a person other than the author of the document provided:</p> <ul style="list-style-type: none"> <li>• the depositing is done with the author's permission</li> <li>• the depositing is done by a registered user</li> <li>• the author confirms that they have retained the right to self-archive</li> </ul>
<b>What material can be deposited?</b>	<p>Journal articles and conference papers. The journal articles may contain images.</p> <p>If a person wants to deposit material that is not a journal article or conference paper, they can contact the Project Coordinator to discuss its suitability.</p>

<b>What material cannot be deposited?</b>	<ul style="list-style-type: none"> <li>• Unpublished material</li> <li>• Research output which does not involve UOW staff</li> <li>• Material intended for commercialisation</li> <li>• Papers which contain confidential material</li> <li>• Papers which, if disseminated, would infringe a legal commitment of UOW and/or the author</li> </ul>
<b>Is it mandatory or voluntary to deposit?</b>	Voluntary
<b>Conditions imposed</b>	
<b>Copyright terms</b>	The website offers a number of “steps” an author can take to ensure they retain the right to deposit a copy of their work. These include checking the publisher’s policy on self-archiving, amending the publication agreement to allow self-archiving, issuing a non-exclusive licence to the publisher instead of an assignment of copyright, and self-archiving a copy of the pre-print version provided the publisher does not object.

	<b>Victoria University</b>
<b>URL</b>	<a href="http://wcf.vu.edu.au/GovernancePolicy/PDF/POI041116000.PDF">http://wcf.vu.edu.au/GovernancePolicy/PDF/POI041116000.PDF</a>
<b>Who may deposit?</b>	Victoria University staff and students
<b>What material can be deposited?</b>	<p>Material which represents publicly available research and scholarly output of the University, including:</p> <ul style="list-style-type: none"> <li>• Refereed scholarly and research articles and contributions by current Victoria University staff and students at the post print stage (subject to the agreement of the publisher)</li> <li>• Refereed scholarly and research literature by current Victoria University staff and students at the pre-print stage (with corrigenda added subsequently if necessary)</li> <li>• PhD and Masters by Research degree thesis by Victoria University students</li> </ul>
<b>What material cannot be deposited?</b>	<ul style="list-style-type: none"> <li>• Material to be commercialised</li> <li>• Material containing confidential information</li> <li>• Material promulgation of which infringes a legal commitment either by Victoria University or the author</li> <li>• Previously published material where the publisher prohibits inclusion of post prints in a scholarly or digital repository</li> </ul>
<b>Is it mandatory or</b>	The policy states, “Contribution of materials to the E Repository by staff and students is encouraged but voluntary.”



<b>voluntary to deposit?</b>	
<b>Conditions imposed</b>	Where authors or researchers maintain home pages, links should be provided to the article or document which has been submitted to the University E-print repository.
<b>Copyright terms</b>	Responsibility for complying with the University's copyright policies and procedures; any third party contracts; copyright legislation and publishers' rights rests with the staff member/student submitting the item.



**Appendix Two**

**OPEN ACCESS TO KNOWLEDGE (OAK)  
LAW PROJECT**

QUEENSLAND UNIVERSITY OF  
TECHNOLOGY (QUT)

**REPOSITORY DEPOSIT LICENCES: A GUIDE**

Kylie Pappalardo  
2007

# **REPOSITORY DEPOSIT LICENCES: A GUIDE**

The purpose of this guide is to explain the importance of having a Repository Deposit Licence for a digital repository and to provide a range of options to assist in determining the scope and application of the Repository Deposit Licence.

## **INTRODUCTION**

### **What is a Repository Deposit Licence?**

A Repository Deposit Licence (“deposit licence”) is a licence entered into by a person depositing material in a digital repository. Through the licence, the depositor grants certain rights to the repository to deal with the deposited material. A primary purpose of a deposit licence is to ensure that copyright in the material is not infringed by inclusion of the material in the repository or by the repository making the material available to others.

### **Why have a Repository Deposit Licence?**

A deposit licence is important because it establishes a formal relationship between the repository and the depositor.

It informs the depositor about the purpose of the repository, defines what the repository can and cannot do with the deposited material and ensures that copyright in the material is not infringed by the repository where the depositor is not the copyright owner, by requiring the depositor to obtain the permission of the copyright owner to deposit the material in the repository.

A deposit licence clarifies the legal positions of the depositor, the repository and to some extent the persons accessing material in the repository (end-users). It sets out the rights and responsibilities of each party and the actions that may be taken if terms of the deposit licence are breached. This is crucial because without a formal legal structure surrounding the deposit of material in a repository, it is likely that legal uncertainties will become an issue at a later date.

## **STRUCTURING THE DEPOSIT LICENCE**

It is important to decide how the deposit licence will be structured and presented. A licence that is too long and convoluted may intimidate depositors and make them reluctant to enter into the licence and deposit their material.

The deposit licence should be available online for depositors to enter into at the time of depositing their material. Because it is essential for the repository to get the necessary assurances and permissions from the depositor to deal with the deposited work, the licence should take the form of a click-wrap website agreement. This means that before a depositor can deposit their work, they must read the terms and

conditions of the licence and click an 'I accept' button or they will be prevented from proceeding.

It is necessary to carefully consider who is likely to be entering into the licence. Is the repository confined only to academics in a particular field? If so, the licence should be constructed to apply to that field. For example, academics from law-related fields will be in a better position to understand a licence that is more legalistic in nature. For other fields of research or where the repository applies generally to an entire university, legal jargon should be avoided. The use of language is an important consideration and for clarity it is best practice to use plain English when drafting a deposit licence.

The length and structure of the licence are also important considerations. A licence should not be unnecessarily long or difficult to read. Where it is necessary to have a comprehensive licence, it may be helpful to divide the licence into different sections or parts to make it easier to read. The licence should also be structured appropriately – generally the more significant terms and conditions are best placed at the beginning of the licence where they are most likely to be read, moving through to the less significant terms and conditions.

Depositors may react differently to the deposit licence depending on where in the deposit process it is encountered. Different repositories may want their deposit licence to appear at different stages in the deposit process. Some may consider it best to display the deposit licence at the beginning of the deposit process, whereas others may prefer it to be placed in the middle or at the end.

As a depositor is required to enter into a deposit licence before they can deposit their material, it is important that they understand what they are agreeing to. Therefore, the licence should be as clear and easy to follow as possible. For depositors with questions or concerns about the purpose and scope of the licence, it may be helpful to include a paragraph or two on the website explaining why the licence is required.

## **CRITERIA FOR DEPOSIT**

In order to deposit material in the digital repository and enter into the deposit licence, the depositor must:

- own copyright or be authorised by the copyright owner (which may be the publisher) to deposit the material into the digital repository; and
- have the authority to grant to the repository the rights necessary to make the material available for access by end users in the digital repository.

Additionally, where your institution's open access policy is to create broad dissemination and reuse of material, you may want to allow (or encourage depositors to allow) end-users to exercise rights in relation to the material that go beyond mere access and viewing in the digital repository. If further rights are to be granted to end-users, the depositor must also ensure that they have all necessary rights and authorisations to be able to grant rights to end users to make appropriate use of material deposited in the digital repository.

## **TERMS OF THE LICENCE**

It is essential to know what terms need to be included in the deposit licence as a matter of course and what terms may be included in or omitted from the deposit licence according to the purpose and function of the repository in question.

### **Essential terms**

#### ***Depositor Declaration***

Before depositing material to the repository, the depositor must be able to represent that they are the copyright owner of the material or that they have permission from the copyright owner to deposit the material in the repository. This is important because only the copyright owner will be able to grant to the repository all the rights necessary for the repository to deal with the material, such as the right to reproduce or electronically communicate the material or convert the material to another format for the purpose of preservation. Thus, any permission given by a copyright owner to a depositor must be broad enough to cover all the rights that must be granted to the repository and the rights that are subsequently granted to end-users.

Sometimes a copyright owner will give the depositor a conditional permission which allows deposit of the material in the repository but places some restrictions on how the material may be used. Where this occurs, it may be prudent to include an additional field in the deposit process that allows the depositor to outline or reproduce the conditional permission given by the copyright owner.

#### ***Grant of Rights to the Repository***

The depositor should grant to the repository the non-exclusive right to reproduce, adapt, publish, electronically communicate and distribute the material for the purposes of making the material available to end-users through the digital repository.

This grant can be broken down into a number of components –

- 1) “non-exclusive right” – this means that the depositor or copyright owner retains the right to deposit the material in another repository or grant another party the same rights that are granted to the repository in the deposit licence;
- 2) “reproduce” – means “to copy”. The repository must be able to make copies of the material for the purposes of the repository without fear of infringing copyright;
- 3) “adapt” – the repository must be able to convert the material to different files or formats in order to preserve and maintain the material in the long term;
- 4) “publish” – at law, the copyright owner has the right of first publication of the material, or in other words, the first right to make the material public. Where the material has not otherwise been made public, the repository must obtain the right to make the material public before anyone else;

- 5) “electronically communicate” – this means to make the material available online, which is one of the primary functions of a digital repository and also one of the copyright owner’s exclusive rights at law;
- 6) “distribute” – this protects the repository from any copyright infringement claim for making the material widely available over the internet, which is a global tool.

### ***The Preservation Term***

The depositor should grant the repository a right to keep a copy of the deposited material for security, back-up and preservation purposes. The preservation term allows the repository to retain a copy of the material even where access to the material is otherwise prevented.

### ***Depositor Warranties***

So that the repository can confidently deal with the deposited material, a depositor will be required to represent or warrant that:

- the material is original (i.e. not copied from someone else), or where it does contain parts of someone else’s work, permission has been obtained for those parts and the parts are clearly identified and acknowledged;
- the material does not infringe upon someone else’s copyright;
- the material does not breach any other law (such as laws relating to defamation); and
- where the material has been sponsored by another organisation (e.g. a funding body), the author/depositor has fulfilled any obligations required under the agreement with the sponsor about the use of the material.

### ***Repository Warranties***

The repository should warrant to the depositor that it will not alter or deal with the deposited material except as allowed by the deposit licence.

### ***Removing Material from the Repository and Terminating the Licence***

The deposit licence should address situations where the deposit licence may be terminated and the material removed from the repository. Situations giving rise to removal of material may include:

- where it is discovered that research contained in the material is falsified;
- where the material infringes legal rights of a third party;
- where it is subsequently discovered that the depositor was not the copyright owner and did not have permission from the copyright owner to deposit the material;
- where copyright is subsequently assigned to another party who does not permit inclusion in the repository; or
- where the depositor requests that the material be removed from the repository.

In the event that the material is removed, the associated metadata should be retained in the repository. This enables the repository to keep a record that the material was once included and why it was removed. The deposit licence should make clear the requirement that metadata be retained notwithstanding removal of the material.

Most deposit licences will provide for material being stored in the repository indefinitely, subject to the termination term. However, if repositories do not wish to retain the material indefinitely, the deposit licence should address the exact period of retention of the material.

### ***End-User Access Rights***

The deposit licence should establish the basis on which material is made available to end-users and the rights of end-users to access, use and further distribute the work.

The rights of end-users can be determined in two ways:

- the depositor deals only with the repository, so that the rights of end-users are determined by the scope of the deposit licence (the rights will usually be limited to accessing and viewing the material only); or
- the depositor deals with end-users through a direct licence (called an Author Distribution Agreement), for example through a Creative Commons licence.

Access rights are discussed in more detail below.

### **Non-essential terms**

#### ***Depositors' Rights***

Depositors may need to be reassured by a term in the licence that assenting to the licence and depositing material in the repository does not transfer copyright to the repository. The term can provide that the copyright owner retains the right to make use of current and future versions of the material elsewhere.

Depositors may also like to know whether they have the right to provide updated versions of the material to the repository at a later date and whether the later version will replace or merely supplement the earlier version of the material.

#### ***Reassuring Publishers***

Where the material has been published, the publisher may require or request that citation of the published version of the material will be included and clearly visible in the repository. This provides a level of reassurance to publishers that the published version (as opposed to the author's final version, which is the version of the material that is usually deposited) is still recognised and cited. It may also help to encourage publishers to allow authors to deposit their work in digital repositories.



### ***Repository Responsibilities***

To reduce liability, a deposit licence may provide that the repository is not legally responsible for any mistakes, omissions, or legal infringements within the deposited material. The deposit licence may even require the depositor to indemnify the repository against any legal action arising from any mistakes, omissions or legal infringements within the deposited material.

### **ACCESS RIGHTS**

It may not always be appropriate for a digital repository to be openly accessible to the general public. Different levels of access to a repository can be provided, including access to:

- the general public;
- anyone within a particular institution (usually the institution hosting the repository);
- a select group within the institution; or
- only people registered to have access to the repository, which may include people from the hosting institution and people from other approved institutions.

Even where the repository is accessible by a wide range of people, it may be appropriate for different groups of people to have different levels of access to materials in the repository. For example, some material may be accessible by all end-users, whereas access to other material is restricted depending on the status of the end-user. The scope of access granted to certain materials may be determined by the repository or may be decided in agreement with the depositor through the deposit licence.

Once access is granted to material in the repository, it is necessary to determine what rights an end-user has to use and deal with the material accessed. The rights given to an end-user to deal with the material will depend on what the copyright owner permits. For example, the rights given to an end-user may be to:

- view and use for specified (limited) purposes; or
- view, use and further distribute (usually non-commercially).

The rights given to an end-user will also depend upon whether the depositor deals with the end-user directly, for example through a Creative Commons licence, or only enters into an agreement with the repository (the deposit licence).

The scope of rights granted to end-users to access and use material in the repository should be clearly defined in the deposit licence. It may be necessary to have a few different deposit licences to cover all potential situations.

## **FURTHER LICENSING OPTIONS**

A deposit licence may also give depositors an option to enter into additional licences, usually between the depositor and repository end-users. For example, depositors to the Massachusetts Institute of Technology (MIT) D-Space Repository are required to enter into a non-exclusive deposit licence with MIT. However, they are also given the option of entering into a Creative Commons licence with end-users, through a Creative Commons form which is built into the deposit process.

### **Repository Distribution (End User) Agreements**

A deposit licence will set out the access rights given to end-users in relation to the material deposited. However, it is important to have a mechanism to ensure that end-users do not deal with the material in a way that goes beyond the rights granted by the deposit licence. End-users should be required to enter into an agreement with the repository, called a Repository Distribution (End-User) Agreement (distribution agreement). The distribution agreement gives a direct grant of access and re-use to end-users that is consistent with the terms of the deposit licence.

The distribution agreement should be clearly displayed on the repository website. It should be in a click-wrap form, which requires the end-user to read the terms and conditions of the agreement and to click an 'I agree' or 'I accept' button before they are permitted to proceed to the repository. It is important to obtain the end-user's assent to the terms of the distribution agreement because it takes the form of a contract, which requires agreement by both parties to be binding.

### **Author Distribution Agreement - Creative Commons Licences**

Through a Creative Commons licence, a copyright owner can give end-users rights in relation to their material, subject to certain conditions as selected by the copyright owner. The rights given are the rights to copy, distribute, display and perform the material.

The conditions that may be imposed are:

- Attribution – this applies to all Creative Commons licensed material and means that whenever the material is copied or redistributed the copyright owner must be reasonably credited;
- Non Commercial – the material can be used for non-commercial purposes only;
- No Derivatives – only exact copies of the material (not derivative works based on the original material) can be made, displayed, distributed and performed; and
- Share Alike – end-users may distribute derivative works, but only under a licence identical to the one that governs the original material.

These conditions may be combined in multiple different ways, including:

- Attribution-Share Alike;
- Attribution-No Derivatives;
- Attribution-Non Commercial;
- Attribution-Non Commercial-Share Alike; and

- Attribution-Non Commercial-No Derivatives.

The only conditions that are incompatible and may not feature in the same licence are the No Derivatives and Share Alike terms.

The Non Commercial term may appear frequently in Creative Commons Licences chosen by depositors, particularly if the depositor is required to include this term by a publishing agreement.

For more information on Creative Commons Licences see:

<[www.creativecommons.org](http://www.creativecommons.org)> and <[www.creativecommons.org.au](http://www.creativecommons.org.au)>.



## OAK Law Sample Repository Deposit Licence for Publications

**DISCLAIMER: PLEASE ENSURE THAT YOU OBTAIN LEGAL ADVICE BEFORE YOU USE THIS SAMPLE LICENCE. THIS SAMPLE LICENCE IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY. IT WILL NOT SUIT ALL LICENSING SITUATIONS AND MAY NEED TO BE RE-DRAFTED TO MEET THE REQUIREMENTS OF YOUR INSTITUTION.**

**[Square brackets are used in this Sample Licence to indicate that information needs to be inserted or that alternative terms can be used. The requested information should be inserted or the option selected or deleted as appropriate.]**

THIS LICENCE is made on:

BETWEEN: **[Insert: Name of Institution]** (“Repository”)

AND: **[Insert: Name of person depositing material into Repository]** (“Depositor”)

### RECITALS

- A. The Depositor is the owner **[or co-owner]** of copyright in the material that is being deposited into the digital repository or has been authorised by the owner/s of copyright to deposit the material into the digital repository and to make it available under this Licence.
- B. The Depositor is the author **[or co-author]** of the material being deposited into the digital repository and as such has moral rights in the material.
- C. The Repository agrees to store the material in the digital repository and to make it available for access by other persons on the terms set out in this Licence.
- D. The Repository agrees to make the material available for access and viewing in the digital repository and any additional uses permitted by the End-User Agreement selected by the Depositor under this Licence.
- E. By entering into this Licence and depositing the material into the digital repository, the Depositor does not thereby assign copyright in the material and does not consent to any acts or omissions that would otherwise infringe their moral rights, except to the extent indicated in this Licence.
- F. The owner of copyright in the material reserves the right to make the material available in other locations and media.

### *Interpretation*

- 1. **End-User** means a person accessing the Item made available by the Repository in the digital repository.  
**Item** means the material provided by the Depositor to the Repository for inclusion in the digital repository, including the data, metadata and abstract of the material, and which is subject to the terms of this Licence.  
**Licence** means this Repository Deposit Licence.  
**End-User Agreement** means the licence selected by the Depositor under Clause 11(2) of this Licence.

### ***Term of Licence***

2. This Licence commences on the day on which it is agreed to by the parties and continues for the duration of copyright in the Item or until terminated in accordance with the terms of this Licence.

### ***Depositor's Declaration***

3. The Depositor declares that the Depositor:
  - (a)
    - (i) is the owner of copyright in the Item; or
    - (ii) has the permission of the owner/s of copyright to grant to the Repository and End-Users the rights granted by this Licence; and
  - (b) has moral rights in the Item.

### ***Depositor's Representations and Warranties***

4.
  - (1) The Depositor represents and warrants that:
    - (a) the Item is the Depositor's original work, and does not, to the best of the Depositor's knowledge, infringe someone else's copyright or moral rights; or
    - (b) if the Item contains material for which the Depositor does not own the copyright, the Depositor has:
      - (i) obtained all necessary permissions from the copyright owner/s to:
        1. include the material in the Item;
        2. provide the Item to the Repository; and
        3. grant to the Repository and End-Users the rights given under this Licence; and
      - (ii) clearly identified and acknowledged all third-party owned copyright materials within the text or content of the Item.
  - (2) The Depositor warrants that the Item does not contain any defamatory, offensive or other unlawful matter and makes no improper invasion of the privacy of any person.
  - (3) The Depositor warrants that neither the execution of this Licence nor the performance by the Depositor of its obligations under this Licence will cause the Depositor to be in breach of any agreement to which the Depositor is a party or is subject.
  - (4) If the Item is based upon work that has been sponsored or funded by an agency or organisation other than the Repository, the Depositor represents that the Depositor has fulfilled any right of review or other obligation required of the Depositor under the contract or agreement with that agency or organisation.

### ***Grant of Rights by Depositor to Repository Copyright***

5.
  - (1) In consideration of the Repository storing and making the Item available through the digital repository, the Depositor grants to the Repository the non-exclusive right to reproduce, adapt, publish, communicate and distribute the Item for the purpose of:

- (a) making the Item available in the digital repository for End-Users to:
  - (i) access and view the Item; and
  - (ii) make such additional uses of the Item as permitted under the terms of the End-User Agreement, if any, selected by the Depositor from the licence options set out in Clause 11(2);
- (b) modifying the Item as required for the technical operation or organisation of the digital repository; and
- (c) making and keeping copies of the Item for use by the Repository for security, back-up and preservation.

### ***Moral Rights***

- (2) The Depositor consents to any act or omission by the Repository in relation to the Item which would otherwise infringe the Depositor's moral rights in the Item provided the act or omission is required for, and directly related to, the technical operation or organisation of the digital repository.

### ***Depositor's Rights***

- 6. (1) The Depositor reserves the right to use the Item and future versions of it in other ways, locations and media.
- (2) The Depositor may, from time to time, provide the Repository with updated versions of the Item and the Repository shall:
  - (a) include the updated version in the digital repository and,
  - (b) upon request by the Depositor:
    - (i) delete earlier version/s as specified; or
    - (ii) retain the earlier version/s as specified.
- (3) To avoid doubt, the parties acknowledge that by entering into this Licence and depositing the Item into the digital repository, the Depositor does not:
  - (a) assign copyright in the Item, in whole or in part, to the Repository; or
  - (b) subject to Clause 5(2), consent to any act or omission in relation to the Item which would otherwise infringe their moral rights.

### ***Repository's Warranties and Obligations***

- 7. (1) The Repository undertakes that it will not alter or deal with the Item except as permitted by this Licence.
- (2) The Repository agrees to clearly identify –
  - (a) the title of the Item;
  - (b) the author(s) of the Item; and
  - (c) where the Item has been published, citation details of the published version,
 in accordance with the details of the Item provided to the Repository by the Depositor.

### ***Repository's Limitation of Liability***

- 8. (1) The Repository is not responsible for any mistakes, omissions, or legal

infringements within the Item nor is it obliged to undertake legal action on the Depositor's behalf in respect of the Item.

- (2) The Depositor agrees that if the Repository identifies the Item in the manner described in Clause 7(2), the Repository will be considered to have attributed the authorship of the author/s of the Item, in satisfaction of the author/s' moral right of attribution.

#### ***Assignment of Depositor's Rights to a Third Party***

9. (1) The Depositor may assign all or any of the Depositor's rights in the Item under this Licence [, subject to Clause 9(2) and 9(3)].
- [(2) Upon assignment of copyright in the Item to a third party, the Depositor must inform the Repository of the assignment and provide to the Repository detailed contact information to facilitate the Repository making contact with the assignee..]
- [(3) The Depositor agrees that in the event of assigning copyright in the Item to a third party, the Depositor shall use its best endeavours to secure from the third party assignee all necessary rights to enable the Depositor to continue the operation of this Licence on the basis of:
  - (a) the Depositor being a licensee of the copyright owner in the Item; and
  - (b) with a view to continuing unaltered the operation of this Licence.]

#### ***Termination***

10. (1) The Repository may at any time immediately and without notice terminate this Licence upon the occurrence of any of the following events:
  - (a) where it is discovered that the Item contains or describes research that has been falsified or produced as a result of fraudulent or deceptive actions by any person;
  - (b) where it is discovered that the Item is not the Depositor's own work;
  - (c) where the Item infringes the legal rights of any third party;
  - (d) where the Item contains defamatory, offensive, confidential or culturally sensitive information that necessitates removal of the Item from the digital repository; or
  - (e) where it is discovered that the Depositor is not the owner of copyright or does not have the permission of the owner/s of copyright or moral rights in the Item to deposit it into the digital repository under this Licence.
- (2) The Repository shall, upon demand being made by the Depositor, promptly remove the Item from the digital repository.
- (3) The Repository will remove the Item from the digital repository within 7 days of termination of this Licence, however the metadata describing the Item will be retained and a copy of the Item will be archived by the Repository but will not be publicly accessible.
- [(4) Where copyright in the Item has been assigned to another party and the Depositor has been unable, despite its best endeavours in accordance with Clause 9(3), to secure the rights necessary to enable the



continuing operation of this Licence, this Licence shall automatically terminate.]

***End-User Agreement***

11. (1) The Depositor authorises the Repository to make the Item available for access by End-Users:
- (a) for viewing in the digital repository; and
  - (b) for such additional uses permitted under the terms of the End-User Agreement, if any, selected by the Depositor from the licence options set out in Clause 11(2)(a) to (c).

***Note: If the Depositor wishes to grant rights to End-Users that go beyond those described in Clause 11(1)(a)(that is, to access and view the Item in the digital repository), the Depositor must select ONE of the licence options set out in Clause 11(2) by clicking on the box corresponding to the appropriate licence option.***

***If no additional licence option is selected in Clause 11(2), the Repository is only permitted to make the Item available for access and viewing by End-Users in the digital repository.***

- (2) The Depositor authorises the Repository to make the Item available for use by End-Users in accordance with the terms of the End-User Agreement indicated below:
- (a) an End-User Agreement provided by the Depositor, which is set out as Attachment 1 to this Licence; or
  - (b) an End-User Agreement provided by the Repository, which is set out in Attachment 1 to this Licence; or
  - (c) the Creative Commons Licence specified by the Depositor.

Click ONE of the following boxes to indicate which End-User Agreement applies to the Item:

- ☐ End-User Agreement provided by Depositor (as set out in Attachment 1) – Clause 11(2)(a).
- ☐ End-User Agreement provided by Repository (as set out in Attachment 1) – Clause 11(2)(b)
- ☐ Creative Commons licence:
  - ☐ Attribution
  - ☐ Attribution-Share Alike
  - ☐ Attribution-No Derivatives
  - ☐ Attribution-Non Commercial
  - ☐ Attribution-Non Commercial-No Derivatives

☐ Attribution-Non Commercial-Share Alike

- (3) The Repository will take all reasonable steps to ensure that the terms of this Licence, including the terms of the End-User Agreement selected by the Depositor under Clause 11(2), are brought to the attention of End-Users accessing the Item in the digital repository.
- (4) To avoid doubt, this Licence does not extinguish any rights available to End-Users under the *Copyright Act 1968*, including but not limited to fair dealing for personal research or study.

***Governing Law***

12. This Licence is governed by the law of the State of **[Insert: Name of State in which the Repository is located]**

**[OPTIONAL CLAUSE – Delete if not required]**

***Depositor's Indemnity***

13. The Depositor indemnifies the Repository against any claim that may arise regarding the Item, the Repository's use of the Item and any breach by the Depositor of its obligations, representations and warranties under this Licence.]

**Execution**

- ☐ **I ACCEPT the terms of this Licence**
- ☐ **I DO NOT ACCEPT the terms of this Licence**

**ATTACHMENT 1**

**End-User Agreement provided by Depositor – Clause 11(2)(a)**

**or**

**End-User Agreement provided by Repository – Clause 11(2)(b)**

## **Accompanying Notes to the OAK Law Sample Repository Deposit Licence**

### **Title - Sample Repository Deposit Licence for Publications**

**Intention of Licence:** This Licence is intended to apply to the deposit of publications in a digital repository. It is a licence of the use of copyright in the publication, from the person who is depositing the publication (the Depositor) to the institution that is hosting the digital repository (the Repository). Copyright is the primary intellectual property right relevant to publications and other written material.

### **Description of Date and Parties**

**Date:** The date of the Licence can be automatically generated by the computer to be the date on which the click-wrap Licence is accessed and agreed to.

**Parties:** The name of the Depositor can be automatically generated by the computer from the details of their login. It is advisable to require Depositors to login in before they deposit work – this allows the Repository to control who may deposit material to the digital repository.

### **Recitals A to F**

**Purpose of Recitals:** The purpose of the Recitals is to set out the background and the context of the Licence for readers. Generally, Recitals are held not to be binding on the parties to the agreement.

**Retaining Rights:** Recitals E and F – These are essentially reassurance recitals. Some Depositors may be concerned that by giving their work to the Repository, they are giving up their rights in the work. Recitals E and F assure them that this is not the case. For more on reassuring authors, see Section 7.0 Advocacy in this Guide.

### **Clause 1 – Interpretation**

**Definition of “Item”:** “Item” is defined to mean the material provided by the Depositor to the Repository. The material will be what is allowed to be deposited in the digital repository as determined by the Repository. For example, material may include articles, book chapters or conference papers. For more on the types of materials that may be included in a digital repository, see Section 3.0 Material in this Guide.

### **Clause 2 – Term of Licence**

**Term:** The default term of this Licence is the duration of copyright in the deposited Item. For published literary works, this will usually be the life of

the author plus 70 years.<sup>232</sup> The term is therefore the length of time for which permission will ordinarily be required to include copyright material in the digital repository. However, this term can be modified to a shorter or longer period of time as determined by the Repository.

### Clause 3 – Depositor’s Declaration

**Ownership of Copyright:** Clause 3(a) provides for two possible circumstances of copyright ownership that may apply to a Depositor depositing an Item into the digital repository:

- (i) The Depositor is the copyright owner; or
- (ii) The Depositor does not hold full copyright in the Item. In this situation, the Depositor will need to obtain the permission of all owners of copyright in the Item before the Depositor can enter into the Licence.

Possible situations covered by Clause 3(a)(ii) are where:

- copyright in the Item has been assigned to a publisher or another party; or
- the Depositor’s employer holds copyright in the Item; or
- there are co-authors who also hold copyright in the Item.

**Moral Rights:** Clause 3 also deals with moral rights. Under the *Copyright Act 1968*, an author of a literary, musical, dramatic or artistic work or a cinematographic film has moral rights in their work, which arise automatically. There are three primary moral rights:

- the right to have authorship attributed to the work;
- the right not to have the work falsely attributed; and
- the right of integrity of authorship, which is the right not to have the work treated in a derogatory manner.

Moral rights cannot be transferred or assigned, but an author can consent to persons using the author’s work in a way that would otherwise infringe those moral rights.

The Depositor will hold moral rights in the Item. Where there are co-authors, the co-authors will also hold moral rights in the Item. The Depositor will not need permission from other moral rights holders to deal with the Item, unless he or she anticipates a likely infringement of those moral rights. However, Depositors may still wish to inform other moral rights holders that they are intending to deposit the Item into the digital repository.

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<sup>232</sup> *Copyright Act 1968* (Cth), s33.

## Clause 4 – Depositor’s Representations and Warranties

**Protection:** Obtaining warranties and representations from Depositors will help to protect Repositories from liability for any material in an Item that infringes copyright or other laws. Clause 4 places responsibility on Depositors to ensure, to the best of their knowledge, that material can be legally included in the Item and deposited into the digital repository.

**Ownership of Copyright and Moral Rights:** Clause 4(1)(a) will apply where the Item is entirely the original work of the Depositor and does not include any material that is owned or created by someone else. Where the Item does include material that is owned or created by someone else (for example, an article may reproduce a diagram or a table from another source), Clause 4(1)(b)(i) provides that the Depositor has obtained the necessary permissions to include the material in the deposited Item.

**Attribution by Depositor:** Clause 4(1)(b)(ii) ensures that any third party authors whose materials are included in an Item are clearly acknowledged and identified by the Depositor. This seeks to prevent any claims by such third parties of an infringement of their moral right of attribution.

**Outside Obligations:** Under Clauses 4(3) and (4), the Depositor is giving an assurance that he or she will not be in breach of any employment, funding or other agreement by depositing the Item into the digital repository. This seeks to avoid the Repository being included in any disputes between the Depositor and a third party about the Depositor’s ability to enter into the Licence.

## Clause 5 – Grant of Rights by Depositor to Repository

**Consideration:** Under principles of contract law, a contract will not be binding unless some form of consideration or “value” has been provided by both parties. In this Licence, the consideration provided by the Depositor is the provision of the Item and the granting of rights to the Repository. The consideration provided by the Repository is the storing of the Item in the digital repository and making it available to End-Users.

**“Non-exclusive”:** A non-exclusive grant means that the Depositor or copyright owner retains the right to deposit the Item in another digital repository or grant another party the same rights that are granted to the Repository under this Licence, if they wish.

**“Publish”:** Under Clause 5(1) and in this Licence, “publish” means to make publicly available through the digital repository.

**Morals Rights Consent:** Clause 5(2) requires Depositors to consent to an act or omission by the Repository that would otherwise infringe the Depositors’ moral rights in an Item. However, Clause 5(2) also assures Depositors that any action taken by the Repository relating to the Depositors’ moral rights will be only for the purposes of the technical operation or organisation of the digital repository under the Licence and not for any other purposes. For

example, the Repository may convert the Item into another electronic format in the digital repository.

## **Clause 6 – Depositor’s Rights**

**Reserving Rights:** As in Recitals E and F, Clause 6(3) reassures Depositors that they are not assigning their copyright in the Item or giving up their moral rights other than for the purposes of the Licence (as stipulated in Clause 5(2)). Importantly, Clause 6(1) also assures Depositors that they and/or the copyright owner(s) are free to use the Item and future versions of it in any other ways, locations and media that they choose (for example, they can publish the Item).

**Updating:** Clause 6(2) ensures that the digital repository is kept up-to-date with any latest versions of the Item supplied by the Depositor. It imposes an obligation on the Repository to upload and include in the digital repository any updated versions of the Item which are provided to the Repository by the Depositor. This clause also satisfies Depositors that they retain a level of control over the appearance of their work in the digital repository.

## **Clause 7 – Repository’s Warranties and Obligations**

**Attribution by Repository:** Clause 7(2) ensures that the Repository is not infringing any author’s moral right of attribution. The purpose of including the citation details of the published version is essentially an advocacy one – it helps to convince publishers to allow deposit of published works in which they hold copyright because they too will be getting increased visibility from inclusion of the work in the digital repository. For more on advocacy, see Section 7.0 in this Guide.

**Accurate Identification:** This qualification (“in accordance with the details of the Item provided at the time of deposit by the Depositor”) under Clause 7(2) is important for the Repository in terms of liability. Any identification of the Item, the author or the publication details of the Item will be made by the Repository from the metadata information entered by the Depositor at the time of deposit. This qualification ensures that where the Depositor has entered information incorrectly, the Repository will not be held responsible for incorrect or inaccurate identification of the Item, author or publication details.

## **Clause 8 – Repository’s Limitation of Liability**

**Liability:** Under Clause 8(1), the Repository will not be legally responsible for any infringements of legal rights within the Item deposited in the digital repository. Thus, if the Item contains material for which the Depositor does not hold copyright and does not have permission to include in the Item or if the Item contains any other material that breaches the law, it will be the Depositor who is responsible for that infringement or breach, not the Repository.

## Clause 9 – Assignment of Depositor’s Rights to a Third Party

**Assignment:** Clause 9(1) is important in that it reinforces the Depositor’s right and freedom to assign his or her rights in the Item to any third party without being prohibited from doing so by the Licence.

**Informing the Repository of the Assignment:** Clause 9(2) ensures that the Repository is provided with the contact details of an assignee of the copyright in the Depositor’s Item. This is important for the following reasons:

- if Clause 9(3) is included in the Licence, the Repository may wish to confirm that the assignee has, in fact, given permission to the Depositor to continue the operation of the Licence;
- the Depositor may fulfil the best endeavours obligation under Clause 9(3) by attempting to secure a permission from the assignee, but may still be unsuccessful in securing this permission. If this is the case, the Repository may itself wish to contact the assignee to seek permission or the fulfilment of another Licence; or
- an institution may wish to omit Clause 9(3) from the Licence and only impose the requirements of Clause 9(2) on the Depositor, so that it is up to the Repository to contact the assignee and seek permission to keep the Item in the digital repository.

**Best Endeavours Obligation:** The purpose of Clause 9(3) is to create an opportunity for the Licence to continue in operation in its present form, even where copyright in the Item is assigned to another party.

If the “best endeavours” obligation is not placed on the Depositor, the Repository would need to take the following steps to retain the Item in the digital repository after copyright is assigned:

- terminate the Licence with the Depositor; and
- seek a new licence or permission from the assignee (the new copyright owner) to make the Item available in the digital repository.

Ultimately, whether to include Clause 9(3) in the Licence is a risk management decision for the Repository. It is a matter of balancing two considerations:

- assignees may be reluctant to enter into a Repository Deposit Licence to make the Item freely available in the digital repository, particularly where they intend to commercialise the Item. In these situations, it may be easier to seek a mere permission from the assignee and to have the author continue as Depositor; and
- potential depositors may be adverse to having the obligation to seek copyright permission from an assignee imposed upon them and may

decline to deposit their work or enter into a Repository Deposit Licence containing this obligation.

If a Repository does not want to impose the “best endeavours” obligation on a Depositor, the Licence can be altered to remove Clause 9(3) and instead place the responsibility on the Repository to obtain permission from the new copyright owner for inclusion of the Item in the digital repository.

## **Clause 10 – Termination**

**Repository’s Discretion to Terminate:** Clause 10(1) applies to situations where there are deficiencies in the Item that may give rise to termination of the Licence. There may still be an opportunity to rectify such deficiencies and continue the Licence, but this is ultimately decided by the Repository.

**Depositor’s Freedom to End Licence:** Clause 10(2) gives the Depositor the choice to have the Item removed from the digital repository and to terminate the Licence at any time. The policy reason behind Clause 10(2) is that deposit is voluntary and a Depositor who later changes his or her mind about a deposit should not be forced to keep the Item in the digital repository against his or her will.

**Assignment:** If Clause 9(3) has not been included in the Licence by the Repository, Clause 10(4) should also be omitted. If Clause 9(3) has been included in the Licence, Clause 10(4) should be included as well.

## **Clause 11 – End-User Agreement**

**Access and View:** Under Clause 11(1)(a), the Depositor licenses the Repository to make the Item available in the digital repository so that ALL End-Users may access the Item and view it on their computer screen.

If the Depositor wishes to grant additional rights to End Users that go beyond those described in Clause 11(1)(a), the Depositor must (with the permission of the copyright owner where relevant) select one of the further licensing options set out in Clause 11(2).

**Further Licensing Options:** A Depositor may expressly grant specific additional rights to End-Users by selecting ONE of the further licensing options set out in Clause 11(2). The options are:

- an End User Agreement provided by the Depositor – Clause 11(2)(a);
- an End User Agreement provided by the Repository – Clause 11(2)(b); or
- a Creative Commons licence – Clause 11(2)(c).

The Depositor selects the option by clicking the box in Clause 11(2) that corresponds to the appropriate option.



Where the Depositor chooses to provide their own End User Agreement (that is, the option in Clause 11(2)(a)), they must set it out as an attachment (Attachment 1) to the Repository Deposit Licence.

Where the Depositor chooses to use an End User Agreement provided by the Repository (that is, the option in Clause 11(2)(b)), the Depositor should set out the Repository's End User Agreement as an attachment (Attachment 1) to the Repository Deposit Licence. In practice, this will typically involve the Depositor copying the Repository's standard End User Agreement from the Repository's web site and including it in Attachment 1 to the Repository Deposit Licence.

Where the Depositor chooses to make the Item available under a Creative Commons licence (that is, the option in Clause 11(2)(c)), the Depositor will need to choose which Creative Commons licence conditions apply by selecting one of the six Creative Commons licence options. Depending on the functionality available on the Repository's web site, upon clicking on the box to select among the Creative Commons licences, the text of the Creative Commons licence, the Creative Commons icons and the copyright notice may be automatically attached to the Item.

The **End User Agreement** may take one of two forms:

- (1) *a licence from the Depositor to the End User* – here the licence is between the Depositor and the End User but the Repository is not a party to the End User Agreement; or
- (2) *a licence from the Depositor to the Repository* - here the Depositor permits the Repository to sub-license the use of the Item to the End User on the terms specified by the Depositor in the End User Agreement, but there is no direct relationship between the Depositor and the End User.

Note that if the Depositor does not choose any further licence option under Clause 11(2), the Repository is only permitted to make the Item available for access and viewing by End-Users in the digital repository.

**Informing End-Users about End-User Agreement:** Clause 11(3) will usually require the End-User Agreement to be in a click-wrap form so that it is visible to and binding upon End-Users.

Clause 11(4) makes it clear that the licence granted to End Users under this clause (the End User Agreement) does not limit or exclude any rights that End Users have under the *Copyright Act 1968*. Any rights arising under the legislation are preserved by Clause 11(4).

## **Clause 12 – Governing Law**

**Jurisdiction:** Clause 12 ensures that any disputes about the Licence are heard in one agreed legal jurisdiction, without having to argue about where such

disputes should be contested. It is advisable that the jurisdiction chosen be that of the Repository and not that of Depositor (which may change from Depositor to Depositor).

### **Clause 13 – Depositor’s Indemnity (Optional Clause)**

**Protection:** This optional clause places all liability (and associated legal costs) solely on the shoulder of the Depositor for any legal action that might arise out of:

- inclusion of the Item in the digital repository; or
- the Depositor’s failure to fulfil his or her Licence obligations.

In deciding whether to impose this indemnity, a Repository should consider two competing objects:

- risk management; and
- the need to engage potential depositors and to populate the repository. An indemnity clause may mean that some academics will be reluctant to deposit their work and enter into the Licence for fear of the obligations and liabilities that will be placed upon them.

## **SURFfoundation LICENCE TO DEPOSIT IN A DIGITAL REPOSITORY:**

### **Licence to Deposit in a Digital Repository<sup>233</sup>**

August 2007

**The undersigned,**

...

Name of Depositor (author);  
hereinafter referred to as "Depositor"

grants to

Name of Institution,  
hereinafter referred to as "Depository",

the following licence.

#### **Whereas**

This Licence to deposit concerns the storage and provision of access to scientific/scholarly works or digital files in a digital repository; it reflects the basic principle that such material should be made freely accessible to third parties without restriction:

- Depositor and Depository believe it is in the general interest to grant maximum access to scholarly/scientific works and/or digital files without compromising quality or academic freedom, especially when it is public resources that finance such works;

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<sup>233</sup> Wilma Mossink, from the SURFfoundation, has asked us to acknowledge two points in relation to the SURFfoundation Licence to Deposit in a Digital Repository:

- this licence may be adapted for other uses, for example, open educational purposes; and
- this licence specifically does not allow commercial use without further permission from the copyright-owner.

Under the OAK Law Sample Repository Deposit Licence, reuse of deposited material for commercial purposes will not be allowed without the further permission of the copyright owner, unless the depositor has attached a Creative Commons licence or other licence that allows commercial reuses (e.g. a Creative Commons Attribution only licence).

- Depositor and Depositary accept that weighty reasons may make it necessary for there to be an embargo on the accessibility for third parties of scientific/scholarly works and the underlying files (including databases);
- In the above situation, Depositary and Depositor may – in close consultation – apply an embargo lasting no longer than 6 (six) months.

## Clause 1 Definitions

The following words shall have the meanings assigned to them below:

1. **Acceptance:** the communication to Depositor by Depositary of the latter's willingness to accept and preserve Depositor's work and make it available to third parties.
2. **Work:** a scientific/scholarly article by Depositor as well as associated elements such as files (including databases), models, and visualisations titled and/or described " ".
3. **Use for Commercial Purposes:** use of the Work with the object of acquiring a monetary advantage by means of sale, loan, transfer, lease, provision, or another form of exploitation of the Work or a copy of the Work. There is no question of commercial use by Depositary if it requires users to pay a subscription or registration fee, or passes on to users the actual costs incurred, for example for copies.
4. **Embargo:** a waiting period to be observed before a Work may be made accessible to third parties from the digital repository in which it is included.

## Clause 2 Licence

1. Upon Acceptance, Depositor grants Depositary, free of charge, an irrevocable non-exclusive Licence to (a) include the Work in its digital repository by transferring the content of the Work to a data medium at the disposal of Depositary, regardless of the manner or form, and (b) to make the Work accessible to third parties.
2. The non-exclusive Licence referred to in Clause 2.1 encompasses the right for Depositary:
  - to make the Work available to third parties by means of distribution, online transmission or transmission in some other form;
  - to make the Work accessible to all under a non-exclusive and irrevocable licence granting users of the digital repository the right to copy, use, distribute, transmit and display the Work publicly and to make and

distribute derivative works, on condition that the name of the Depositor and source are properly indicated;

- to store and preserve the Work and keep it accessible for the future;
- to alter or restrict access if there are weighty reasons for doing so.

### **Clause 3      Obligations of Depositary**

1. Depositary shall clearly indicate who Depositor of the Work is and shall also indicate that, when making use of the Work, users are obliged to clearly indicate the name of Depositor/ and the source of the Work.
2. Depositary, to the best of its ability and means, shall permanently store the deposited Work and shall maintain it as readable and accessible.
3. Depositary shall store the Work and include in its digital repository in its original form. In order to permanently preserve the Work, to ensure that it can be consulted, and to provide electronic access to it, Depositary shall be entitled to make copies of the Work and to alter them; in doing so, Depositary shall do everything reasonably possible to respect the technical functionality, design, and content of the Work.
4. If the Work is subject to an Embargo, Depositary, to the best of its ability and means, shall provide effective (technical) facilities to prevent unauthorised third parties from calling up and/or reusing the Work, or parts of the Work, during the Embargo period.
5. Depositary shall clearly indicate to users that they require the consent of Depositor for any commercial use of the Work.
6. Depositary shall not use or sell on the deposited Work for commercial purposes.

### **Clause 4      Moral rights**

1. The granting of this Licence does not affect Depositor's moral rights in respect of the Work. In particular, Depositor shall have the right to be mentioned as Depositor of the Work and shall have the right to contest any distortion of or adverse effect on his/her Work.
2. If Depositor can show that his/her moral rights have been infringed by Depositary's use of his/her Work pursuant to this non-exclusive Licence, he/she shall be entitled to request that Depositary cease using his/her Work in that manner. Depositary shall comply with such request unless this

cannot be required of it given the scientific/scholarly or historical value of the Work.

#### **Clause 5      Indemnification**

1. Depositor warrants Depositary that he/she is the (sole) creator in respect of the Work and that the Work does not infringe any rights of any third party.
2. Depositor shall indemnify Depositary in respect of claims asserted by third parties regarding the Work, for example infringement of copyright and/or other rights, portrait right, infringement of privacy and/or the Data Protection Act, and/or abuse/defamation.
3. Depositor hereby states that, where the Work (or any contribution based on the Work) has been sponsored or subsidised by another institution or organisation than [name of the Institution], all obligations regarding publication and/or other obligations have been complied with that are imposed by said sponsor, institution, or organisation.

#### **Clause 6      Liability**

1. Depositary shall not be liable in respect of the loss of some or all of the Work.
2. Depositary shall not be liable for any damage resulting from any act or omission of a third party to whom Depositary has made the Work available.

#### **Clause 7      Changes/restrictions regarding access to the Work**

1. If there are weighty reasons for him/her to do so, Depositor shall be entitled to request Depositary to temporarily suspend access by third parties to the Work or parts of the Work. In that event, Depositary shall retain the Work in the digital repository but, from the point at which Depositor submits his/her request, shall cease to allow third parties to access the Work or parts of the Work. Depositary shall only comply with said request in the event of a contravention of public order or public morals.
2. In the event of a contravention of public order or public morals, Depositary shall be entitled to temporarily or permanently restrict or prevent access to the Work or parts of the Work. In such event, Depositary shall inform Depositor as soon as possible.

**Clause 8      Legal relationship**

Depositary shall be entitled to transfer its exploitation rights in respect of the Work to a third party on condition that said third party complies with the obligations undertaken by Depositary vis-à-vis Depositor. In the event of such transfer, the legal successor to Depositary shall be bound by the present Licence to Deposit.

**Clause 9      Multiple Depositors**

If the Work has more than one author, Depositor has gained the consent of each of them in order to enter into this Licence to deposit on their behalf.

**Clause 10    Applicable Law**

This Licence to deposit shall be subject to the law of the country in which Depositor resides. Any dispute shall be submitted for adjudication to the competent court in that country according to the normal rules regarding jurisdiction.

**Clause 11    Final Provision**

This Licence to deposit shall take effect on the day of Acceptance.

Signed by Depositor on (date)

